IMPLICATIONS OF THE EC–1992 PLAN FOR U.S. TRADE COMPETITIVENESS AND SMALL BUSINESS

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BEFORE THE

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CONTENTS

Page

Hearing held on: February 9, 1989 1

WITNESSES

THURSDAY, FEBRUARY 9, 1989

Burroughs, Franklin T., president, Armstrong College, Berkeley, CA 41
Calingaert, Michael, visiting senior fellow, National Planning Association 8
Cooney, Stephen, director, international investment and finance, National Association of Manufacturers 33
DeBakey, George, executive director, ADAPSO 38
Spero, Joan E., senior vice president, American Express Co. 12
Swain, Frank, Chief Counsel, Office of Advocacy, Small Business Administration 30
Vargo, Franklin J., Deputy Assistant Secretary for Europe, U.S. Department of Commerce 4

APPENDIX

Opening statements:
LaFalce, Hon. John J. 48
Sisisky, Hon. Norman 50
Prepared statements:
Burroughs, Franklin T. 197
Calingaert, Michael 69
Cooney, Stephen, with attachments 105
DeBakey, George 179
Spero, Joan E. 82
Swain, Frank S. 96
Vargo, Franklin J 51

IMPLICATIONS OF THE EC-1992 PLAN FOR U.S. TRADE, COMPETITIVENESS, AND SMALL BUSINESS

THURSDAY, FEBRUARY 9, 1989

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice, at 9:43 a.m., in room 2359, Rayburn House Office Building, Washington, DC, Hon. John J. LaFalce (chairman of the committee) presiding.

Chairman LAFALCE. The Small Business Committee will come to order. First of all let me say that I am very pleased at the attendance of the members of the committee this early in the morning. But I think that's indicative of the importance we attach to the EC-1992 plan for American trade competitiveness and small business, the subject of today's hearing.

Once established, this plan would provide for the free movement of goods, services, people, and capital to a $4 trillion market of 320 million people. The impact of EC-1992 upon international trade and financial flows, as well as ongoing GATT negotiations, depends on whether economic unification will lead to an increase in free trade, or to an increase in European protectionism.

Today's hearing will focus on the implications of this plan for American trade and competitiveness, with a particular emphasis on American small business. In general I believe it is in our best interest to encourage the move toward a more integrated European market, particularly if it leads to arrangements comparable to those developed in the recent American-Canadian Free Trade Agreement.

First, our stake in the European Community is substantial, accounting for $160 billion in exports and imports in 1987. In addition, if the establishment of a unified market opens up new American business and export opportunities, this could help to further reduce the U.S. trade deficit.

Over the past year the American trade deficit with the European Community has decreased, from $25 billion to $12 billion. This 50 percent reduction was based primarily on a double-digit increase in American exports to Europe. Since 24 percent of our total exports go to Europe, this market is second only to Canada in terms of its overall importance for American exports.

While I am generally supportive of the 1992 movement, I am nevertheless concerned about whether the establishment of European Community-wide relations could potentially hinder the ability

of American business to have fair market access to Europe post-1992.

Members of the European Community currently rely on both tariff and nontariff barriers to protect their domestic industries. Internal trade barriers will disappear after 1992, but it is not at all clear that external trade barriers will.

For example, with regard to trade barriers, countries such as Italy, France, and Spain maintain significant import restrictions on products such as textiles and automobiles. It is not yet decided if these quantitative restrictions will be completely eliminated or if they will become community-wide restrictions in 1992.

Nontariff barriers may also be applied to the entire community, which would make it more difficult for American companies to do business there. Greater trade discrimination could occur, for example, through the establishment of reciprocity requirements, tougher local content regulations, the maintenance of subsidies, discriminatory public procurement practices, and limited access to research and development programs.

For American small business, several of the recently enacted or proposed directives on standardization, certification, and testing could bring mixed results. On the one hand, development of European wide standards would make it easier for a small business to develop and market its products. On the other, new requirements that products be tested and certified on EC soil may make it more expensive for small firms to compete and sell its products there.

Many of these proposed directives are still subject to ongoing negotiations within the community. I am concerned, therefore, whether the Federal Government is doing all that it can to work with the European Community and member governments to ensure continued market access for American business. It is imperative that the administration develop a coherent and a consistent foreign economic policy toward EC–1992. The administration needs to speak with one voice on the subject so that there will be no doubt that the United States expects to maintain and strengthen our vital relationship with the community through the establishment of both freer and fairer trade.

Due to the importance and the timeliness of this hearing, we have two panels today who can speak with much authority on this important issue. The first panel will focus on the impact of the 1992 plan on American foreign economic policy, trade, and competitiveness.

Frank Vargo, Deputy Assistant Secretary, Department of Commerce, will discuss the administration's policy and efforts. Michael Calingaert, senior fellow, National Planning Association, will examine the current progress and problems within the European community to fully establish the internal market plan by 1992, and Dr. Joan Spero, the senior vice president of the American Express Co., will look at the proposed impact of the 1992 plan on American financial and service sectors.

Our second panel will examine the implications of the 1992 plan for small business in particular. Frank Swain, the Chief Counsel of the Office of Advocacy in Small Business Administration, will present the results from a recently completed study on small business exports of manufactured products. Steve Cooney, the director

of the international affairs and finance for the National Association of Manufacturers, will look at the implications for small American manufacturers, and George DeBakey, the executive director of ADAPSO, will discuss the implications for small computer software and services industries, such as we have in Buffalo, NY. Dr. Frank Burroughs, the president of Armstrong College in Berkeley, CA, will present his findings from his ongoing study of the impact of EC–1992 on small business with a particular focus on current European trade barriers for American small business.

So in short, I think we have two outstanding panels today on a subject of great import, and I'm really anxious to learn from them. Before we call upon them, however, I wonder if there are any members of the committee that have any statements they'd like to make?

[Mr. LaFalce's statement may be found in the appendix.]

Mr. McDade. Mr. Chairman, I would just like to, for all of us, express our appreciation to you for conducting these hearings. This is an incredibly important opportunity, as well as an important challenge for all of us. When one thinks of the creation of a potential $4 trillion market, that kind of says it all, and we do have, I agree with you, excellent people to address the committee today and to begin to see that we are postured in a way that we can maximize our opportunities and take advantage of the market. Thank you, Mr. Chairman.

Chairman LaFalce. Thank you. Mr. Wyden?

Mr. Wyden. Thank you, Mr. Chairman. I very much want to associate myself with your remarks, Mr. Chairman, and just add a couple of points very briefly. I don't want EC–1992 to become a code word for Fortress Europe, but already I'm seeing in my home State of Oregon, our businesses are having to go through some kind of bureaucratic water torture to make these various design changes in order to have their product comply with new EC standards. For example, one of our Oregon firms had to make 15 major design changes in order to have lift trucks be eligible for new EC standards. That's just one area. Another area we're particularly concerned about is integrated circuits, under the requirements of the EC bureaucracy, U.S. chip manufacturers would be forced to buy their way into European sales through development of EC plants.

Now maybe the large companies are going to be able to do it. But we're already hearing about small U.S. chip manufacturers like one in Beaverton, OR, that aren't going to be able to front those costs.

Now there are other examples, Mr. Chairman, just one additional one that concerns me deals with agriculture. Last year Oregon sold about $47 million worth of fruit to the overseas markets including Europe. We have one example already with respect to American fruit flies. Spain is concerned about these fruit flies. They're found only in warmer U.S. regions; our cold winters in the Northwest mean that it's not a problem for Oregon fruit growers. But already Spain is applying restrictive standards that are going to make it tough for us to sell fruit in Europe.

So the examples go on and on, Mr. Chairman, but I wanted to conclude with one last point. I don't think that we can crack this extraordinary market with the fractured, disorganized approach

that we're seeing in the trade agencies right now. There's no central clearing house for inquiries, there's no central point for contact, and I think we need to work together on a bipartisan basis to put together a coordinated effort. If we don't, we're going to lose out on what I think is an extraordinary trade opportunity. As of today, the fact of the matter is there's simply nowhere for our people and our businesses to turn and I just find that unacceptable. Mr. Chairman, I thank you.

Chairman LAFALCE. Thank you very much. I do not know Mr. Mosbacher. I do know Ms. Carla Hill very, very well. I have worked with her over the years, and have the highest regard for her. I would expect that Carla Hill and Mr. Mosbacher will be getting together in the very near future, if they haven't done this already, to insure that whatever coordinated efforts they have would be enhanced even more so in order to accomplish precisely what you say.

I also know of your great concern in the State of Oregon, because of the tremendous amount of exports from Oregon, and I think we should contemplate hearings on EC–1992 in Oregon sometime. Even if I couldn't make it, or Norm couldn't make it, you might be desirous of chairing such a hearing.

Mr. WYDEN. We're going to try to lure you two out there.

Chairman LAFALCE. Does anybody else have a statement they'd like to make? Mr. Sisisky?

Mr. SISISKY. Mr. Chairman, I have a full statement, and I would ask unanimous consent to place it into the record. However, I would like to make one statement. In the coming months the Subcommittee on Exports, of which I am chairman, will continue to further explore this issue as it affects U.S. small business exporters. I intend to work very closely with you, Mr. Chairman, and the other members of this committee, and I associate myself with all the other remarks that were made, and again ask unanimous consent to place the entire statement in the record.

[Mr. Sisisky's statement may be found in the appendix.]

Chairman LAFALCE. If there are no other comments by any of the other members, we will hear from the witnesses before us. Our first witness will be Mr. Frank Vargo, Deputy Assistant Secretary for Europe within the U.S. Department of Commerce.

TESTIMONY OF FRANKLIN J. VARGO, DEPUTY ASSISTANT SECRETARY FOR EUROPE, U.S. DEPARTMENT OF COMMERCE

Mr. VARGO. Thank you, Mr. Chairman. I'm very pleased to be here today.

Chairman LAFALCE. Who I might say has achieved an outstanding reputation so far amongst members of both parties, Democrat and Republican, for his knowledge and ability.

Mr. VARGO. Thank you very much, Mr. Chairman. I'm very pleased to be here today to discuss this very important subject. As you noted, by 1992 the European Community expects to complete their internal market and create one single market. This is very important to us because Europe is our most important market. In fact, Mr. Chairman, taking together U.S. exports and the sales of U.S. affiliates in the EC, these amount to over $600 billion. This is

three times the amount of U.S. exports and sales in Canada and four times as much as in Japan.

As you noted in your excellent opening statement, Mr. Chairman, our exports to the EC grew 25 percent last year and our trade deficit has been cut in half. I would like to point out that if, and I do say if, the favorable trends of the last year continue for 1 more year, we'll be back in surplus with the EC this year. When the EC was created——

Chairman LAFALCE. Can I just——

Mr. VARGO. Yes, sir.

Chairman LAFALCE. You said the export and affiliate sales of U.S. companies.

Mr. VARGO. Exports and affiliate sales—the sales of U.S. subsidiaries in the EC. Our exports are about——

Chairman LAFALCE. Right; suppose you exclude the affiliate sales, what are the exports?

Mr. VARGO. About $75 billion.

Chairman LAFALCE. OK, so you're talking about $75 billion from American firms based in the United States.

Mr. VARGO. That's right.

Chairman LAFALCE. You're talking about $525 billion of American firms who have gone over to the EC?

Mr. VARGO. Yes, sir, and I would point out that $75 billion, our latest trade figures, shows the EC market has now exceeded our exports to Canada, so even in exports the EC is very important. It is our single most important market.

Mr. Chairman, when the EC was created in 1958, the members were unable to eliminate a whole host of internal nontariff barriers. Essentially they got rid of internal tariffs, but everything else remained. Getting rid of those barriers is what they're trying to do now. The success of this program is very much in our interest if it is implemented in a way that keeps the market open to international trade and investment, and that's a very important if.

Now based on our analysis in the Commerce Department, based on consultation with over 100 trade associations and talks with thousands of individual firms, we believe that on balance the 1992 program should benefit American companies doing business in Europe. This includes companies exporting to Europe as well as those producing in Europe. It includes small companies and large companies.

Among the positive benefits would be faster economic growth in the EC, which would increase the demand for American products there. Additionally the EC would be an easier and more attractive market in which to sell. Procedures and standards would be more uniform, reducing many of the costs and difficulties that have characterized exporting to these countries in the past.

However, Mr. Chairman, there are some instances where new rules and business practices may result in greater difficulties for U.S. companies. As Germany's Minister of Economics said in Washington last week, and I want to quote him, "there are always voices in Europe that present various reasons for protecting uncompetitive companies, branches, and regions." This is something we have to watch out for very carefully. We have to remain cautious and alert in our approach to the EC's program, and we have to be pre-

pared to guard our trade and investment rights if they're threatened.

We are working very closely in the Department of Commerce with other Government agencies in a coordinated effort to ensure these rights will not be infringed.

There are a number of these problems, Mr. Chairman. One of them is in the area of reciprocity, where the EC Commission has proposed that in services and investment the concept of reciprocity be adopted. If implemented, this concept would be a radical departure from the principles of national treatment.

Also the EC's proposals in government procurement, in the treatment of existing national quotas, in rules of origin and in some other areas are matters of concern for the future—depending on how they're implemented.

But for now, U.S. industry—and this particularly includes small business—is most concerned about two aspects of the EC's program, standards and testing.

On standards, the good news is that companies will have to meet only one standard to sell throughout the EC. But the bad news is for the most part, American companies have no voice in setting those standards. This puts them at a disadvantage in terms of the amount of information and lead time they have to make production changes to meet the European standards.

Second, of immediate concern is the issue of testing and certification—obtaining access for U.S. testing and certification labs—as well as for self-certification by American manufacturers. This is a very high priority. Some of the individual directives that the EC has come out with are very troubling here. But the EC has indicated its willingness to enter into future negotiations for the mutual recognition of test results, certificates, and lab data.

In the meantime we are stressing to our European partners the necessity of opening up the standards process to American firms.

The Department of Commerce has made the EC's 1992 program a top priority. Most of our programs are specifically designed to help small and medium size firms prepare for 1992.

Basically we are doing three things. First we have an awareness and information program to alert U.S. business to the enormous changes occurring in the EC. American companies have to become aware that there are major changes, and that these will have far reaching effects on their sales and export possibilities.

Second, we have a problem solving program to determine which EC directives have a negative impact, and to use the coordinated interagency process to raise these with the EC and to solve the problems.

Third, a market development and export promotion program to help U.S. companies, particularly small or medium sized companies to increase their exports to the EC.

Mr. Chairman, the central part of our awareness program is the "Single Internal Market Information Service," which provides one-stop shopping for U.S. companies. We have established one phone number where any American company can have access to information on the 1992 program and on individual directives, obtain market consultation, assistance in handling problems, access to the interagency process, and so on. If you'll permit me for a moment,

Mr. Chairman, for those who are interested, that phone number is area code 202-377-5276, and it does offer one-stop shopping.

So far over 6,000 American companies—to repeat, 6,000 companies—have taken advantage of this service. And we have distributed, Mr. Chairman, over 50,000 copies of individual EC directives to American companies, most of these to small and medium sized companies. Additionally, we have sent out over 100,000 promotional mailings to alert American companies to 1992. I have a copy of that mailing here, which we sent to a very broad sampling of American industry. I believe that copies have been, or will be, provided to you.

In addition, we have so far scheduled 15 1992 seminars around the country that are specifically tailored to the needs of smaller companies. Emphasizing that U.S. companies should start working now, and not in 1992, to take advantage of these opportunities, we have named our program "Europe Now." This program includes a growing range of matchmaker shows in Europe to help smaller U.S. companies find agents and distributors. Over the last 24 months, close to 250 firms participated in these shows, and more are scheduled this year.

Our country desk officers, industry officers, and foreign commercial service officers provide intensive counseling and assistance to U.S. exporters.

Finally, Mr. Chairman, this fall the Department of Commerce, with the participation of the Small Business Administration, will cosponsor with the European Commission, the first international export show exclusively for small business—"Export '89." This show in Frankfurt, this October, will provide small U.S. companies with a new opportunity to develop exports.

Thus, Mr. Chairman, we—together with other agencies—are working to inform U.S. industry, especially small business, of the problems and opportunities in Europe in 1992 and to help increase U.S. exports. In the U.S. Government, we of course have to focus on the problems and must work to solve problems as they come up. But American industry needs to focus on the opportunities and to get moving now. Thank you, Mr. Chairman.

[Mr. Vargo's statement may be found in the appendix.]

Chairman LAFALCE. Thank you. We are going to defer questions until we have heard the entire panel. But because I've been left hanging on one thing that I consider most important, I'm going to ask a question now. I don't know the appropriate working relationship with respect to 1992 between at least three agencies, Commerce, USTR, and State, and who has responsibility for what. Could you try to flush that out a bit?

Mr. VARGO. Certainly, Mr. Chairman. There is an interagency process that is coordinated by USTR. USTR has a variety of different groups——

Chairman LAFALCE. Is it fair to say, since they're coordinating it, that the USTR has the lead on this issue?

Mr. VARGO. There are various aspects of the issue, but overall I think that would be a fair statement to make as far as pulling everyone together. USTR has an interagency committee, which is comprised of Commerce, State, Treasury, and all the other relevant agencies. This committee meets on a very regular basis, sometimes

several times a week. The TPRG, [Trade Policy Review Group], which is at the Assistant Secretary or Under Secretary level, considers issues on 1992 on a regular basis as well.

The Department of Commerce is responsible for contact with U.S. industry, in terms of ensuring U.S. industry is aware of the problems, and is responsible for analyzing the problems and bringing the problems of U.S. industry to the interagency process. The Department of State is responsible for raising through our embassies abroad these problems with the individual member countries, and with the EC in Brussels.

Chairman LAFALCE. There's some forum for negotiation, is there not, some official forums for negotiation regarding EC–1992? That's a question, if that's correct.

Mr. VARGO. One of the problems that we have with the EC is that we do not have a formal bilateral forum, per se, to raise these problems with the EC. We have approached the EC om this.

Chairman LAFALCE. Does the EC have its own internal forum for discussion and resolution of both external and internal problems?

Mr. VARGO. There is a very complex process within the EC. I would make it parallel, perhaps, to the early United States under the Articles of Confederation. But counting that a forum, yes, they do. I'd be happy to get into a detailed explanation, Mr. Chairman, but it is a large and complex process of bringing 12 nations that have different views together.

Chairman LAFALCE. Maybe I'll just hold my questions until after the other panelists have completed. I think Mr. Calingaert is going to get into this somewhat. But I think it's essential that we understand the process, that we can adopt a process that can best interface with it and be effective there.

Mr. Calingaert, let us now hear from you. You are the visiting senior fellow of the National Planning Association, and just published a best selling book, "The European Challenge," which provides a good overview of this issue.

TESTIMONY OF MICHAEL CALINGAERT, VISITING SENIOR FELLOW, NATIONAL PLANNING ASSOCIATION

Mr. CALINGAERT. Thank you very much, Mr. Chairman. Yes; I just happen to have a copy sitting in front of me. It is out of print at the moment, but it will be back in print in a day or two, and if any member of the committee would like copies, we would be happy, at National Planning Association, to provide them.

Chairman LAFALCE. Terrific.

Mr. CALINGAERT. I do have a statement for the record, but let me just touch on the high points if I may. You asked me particularly to talk about where this program is.

The program is a package of measures that was agreed to in 1985. What is different about this program is that for the first time the community set down a comprehensive package and said all the measures have to be addressed or adopted in order to achieve a single market. They also said the package is indivisible; all these measures have to be addressed. They put a timetable on it for each measure, such that the entire program should be completed by the end of 1992, hence the term Europe 1992. They also agreed in

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treaty form that this was a goal of the community which they would endeavor to complete it time.

The two operative words on the progress of the program are momentum and irreversibility, which just about anybody will quote to you in talking about the community, and I think they're accurate terms. It is moving. I don't see any way that the community will go backwards on what it is doing. The question really is, how far and how fast will it proceed. There is a political consensus in favor of this effort in Europe, and there is very strong backing from the private sector.

Not surprisingly, the community has done better in some areas than in others. I think certainly, if you look back at 1988, there's been remarkable progress in terms of their ability to resolve some rather knotty problems. I would divide their program into three groups in terms of progress: Some where they have done a lot, some where they're moving along, and then a couple of areas where there's been very little progress.

On the good progress side, one area certainly is capital liberalization—a key issue which has to be resolved in order to achieve a single market. There are various restrictions among many of the countries now, relating primarily to short term capital movements, but during the course of last year the community decided to phase out all of the remaining restrictions on capital movements inside the community.

A second area is movement of persons. This has been a great problem in the community, where there is a great reluctance to recognize academic degrees and professional qualifications of other member countries. This has resulted from a combination of concern over levels of competence and different courses of study, length of time of study and also of fear of competition from other countries. There again, an agreement has been taken in principle to phase out the restrictions such that on the whole qualifications obtained in one member country will be recognized in the other member countries.

Far more of the program, I think, we'd have to put in the middle category of some progress being made. Liberalization of services is one area, and Dr. Spero will talk in more detail about that. Services, of course, has been a highly regulated area across the board—financial services, transportation, and other areas. What they are trying to do in the financial area is what they call home country control, where an institution, which is duly established and qualified to operate in one member country can operate in the other member countries across the community as long as they conform with certain generally agreed upon requirements.

A small beginning has been made in transportation—civil aviation, and road transportation.

On the legal side, for the large part businesses operate under national laws and regulations. A whole set of issues would have to be addressed. Lots of problems are involved, particularly relating to company law and that gets into issues of social policy, in other words, social legislation which differs among the member countries. The question is how they can harmonize those different laws in some manner.

They've made a start on a common trademark and patent policy, although there again both issues have been tied up for somewhat extraneous reasons inside the community.

On regulations and standards which Mr. Vargo mentioned, there has been quite a sharp break from the past. Previously they attempted to formulate common standards throughout the community. Forklift trucks was one instance they argued for years and years as to what the proper community standard would be.

What they've now adopted is called a new approach, where the agreement among the member countries will be restricted to what they call the essential requirements, that is factors relating to consumer health, safety, and environment. Whatever standards are adopted in the individual countries, as long as they confirm to the essential requierements will be sufficient for goods to move from one country to another inside the community. They will then move from that to the final stage, which is adopting standards set by the European wide standards bodies. These are wider than just the community; they are essentially all of the western European countries.

Then there's the area of public procurement, a very important one. It may account for as much as 15 percent of gross domestic product inside the community, and it is highly regulated. They are now starting to make that process more transparent, more nondiscriminatory inside the community.

There have been four main areas which have been totally excluded from the regulations of the community—energy, telecommunications, transportation, and water supplies—and they are moving to make regulations in those areas applicable.

Finally, areas where there's been little progress. One has certainly been border controls, and that is the most visible sign of the absence of a single market. The fact is that when you travel from one country to another, you have to stop at the border, and that is because of the differences among the countries in many areas—taxation certainly, plant and animal health requirements, import restrictions in certain countries, illegal immigration which is becoming a great problem in the community, drug trafficking, terrorism. Finding a way to deal with all of those issues without having physical controls at the border has been very difficult for the community.

I then should mention, specifically, taxation. There are different systems among the member states of value added taxes and there are different systems of excise taxes. The variation among countries in terms of the coverage and the tax rates is substantial. These differences have important implications for government revenue. The community is trying to bring the different systems closer together. This does not mean identical systems, but, as with sales taxes in the United States, some greater approximation so that purchases across borders will not make that much of a competitive difference. Not surprising, that's proved to be a very sensitive issue in the community. Not only is it a question of the national prerogatives of national legislatures, but also the enormous changes that it would cause on the fiscal systems in the countries involved.

The bottom line, then, on where this program stands and where it's going, Mr. Chairman, I think, is that it is clearly moving. One

should look at 1992 as a process and not as an event. It's not as if on the last day of 1992, everything will suddenly change. It is an ongoing process. Many of the changes are taking place now, and, by the same token, not all of that program is going to be completed by 1992. Some of the issues are going to be more difficult for them to resolve, and indeed circumstances will change, and some issues will assume greater importance than they had before.

In any event, anyone can safely say that by 1992 Europe will be quite different from what it is when they started the program in 1985, and certainly from what it is in 1988.

Let me, just as a final word in response to your earlier question, talk on process. Yes; obviously there is a process within the community. There are three main institutions. There's the European Commission, which is the executive arm of the community, with civil servants from among the member countries, who execute the laws and policies of the community. Very importantly, it is the one body that makes formal proposals.

Chairman LAFALCE. Who chairs that?

Mr. CALINGAERT. There are 17 commissioners, coming from among the 12 countries, appointed by the member governments. The president of the commission is appointed, again, by the member governments jointly. He is Jacques Delor who is the former French Finance Minister. The commissioners act as a collegial body, and they oversee the work of the commission's civil servants.

There's the council, which takes many forms, but all the member countries are always represented. One thing very important that has happened, in 1987, was the Single European Act, which is the major amendment of the Treaty of Rome. Under the act most decisions involving the internal market are taken by weighted majority voting, rather than unanimity.

While the the council that makes the final approval, the parliament is also involved. The parliament is the only directly elected representative body, with 518 members, and in the Single European Act, it was given greater powers than before. It has the possibility of amending the legislation on the basis of two readings. But essentially it's the parliament and particularly the member governments acting through the council which will make the formal decisions inside the community.

Perhaps I should stop there. I'd be happy to answer your questions when you come around.

[Mr. Calingaert's statement may be found in the appendix.]

Chairman LAFALCE. Who is the head of that group?

Mr. CALINGAERT. Of the council?

Chairman LAFALCE. Yes.

Mr. CALINGAERT. Yes; I'm sorry. The council has a rotating chairmanship, on 6-month periods, among the EC member countries. Now it's Spain, for example. They go in alphabetical order. The council takes various forms—when you're dealing with a transportation issue, it's the transport council or the agricultural council for agricultural issues. But in each case for that 6-month period it is a representative of the member country holding the presidency of the community.

Chairman LAFALCE. What is the position of Sir Roy Denman?

Mr. CALINGAERT. Sir Roy Denman is the representative of the commission in the United States. It's the equivalent of an embassy, and of course it is the equivalent of our ambassador to the U.S. Mission to the community in Brussels.

Chairman LAFALCE. Mr. Vargo, when a decision is made by this coordinating committee headed by USTR, and we want to talk about something that's going on within the European community, some things we like, some things we don't like, who do we talk with?

Mr. VARGO. There are a variety of groups within the Commission. There can be more formal negotiations, which would take place with the External Affairs part of the Commission—Commissioner Adriessen. With the individual issues, this could be done informally with people in the Commission who are working on the directives. So in the Commission, we're able to interface with Commission representatives at a number of different levels.

Chairman LAFALCE. All right; before we hear more about that, we had better go on to Dr. Joan Spero, who wrote an outstanding op-ed piece on the subject of third world debt not too long ago, but it unfortunately didn't get too much publicity. Dr. Spero.

TESTIMONY OF JOAN E. SPERO, SENIOR VICE PRESIDENT, AMERICAN EXPRESS CO.

Ms. SPERO. Thank you. We're still working on that.

Chairman LAFALCE. Good.

Ms. SPERO. Mr. Chairman, members of the committee, I'm pleased to have this opportunity to testify. I also have a more lengthy written statement which I'd like to submit for the record and then just to briefly summarize orally what I said.

As has been suggested, creating an internal market in financial services is one of the central elements of Europe's 1992 program. The EC has adopted directives on mutual funds [UCIT's] capital movements and property/casualty insurance and has already issued draft directives on banking, investment services, and life insurance. This year we see directives on capital adequacy and conduct of business rules.

We expect, Mr. Chairman, that the community will succeed in creating an internal market in financial services. The proposed banking directive is the model for directives in other areas, so I'd like to spend a minute describing it.

The key principle of the banking directive and of all internal market directives in financial services is mutual recognition of home country regulation. Let me explain what I mean by that. The EC will establish, as Mr. Calingaert said, broad policy guidelines.

Chairman LAFALCE. Dr. Spero, what page are you on in your prepared text, if in fact you are reading from your prepared text?

Ms. SPERO. I am not reading from my prepared text.

Chairman LAFALCE. Ok.

Ms. SPERO. I'm somewhere—I can tell you more or less where I am, just a minute Mr. Chairman. About page 4.

The EC then will establish broad policy guidelines and then it will allow each country to adapt its own laws and regulations accordingly. As long as it follows EC guidelines, a regulatory and su-

pervisory regime in 1 state will now be officially recognized in all of the other 11 states. So a firm will need only one license rather than 12 in order to open branches throughout the EC, sell its products across borders, and pursue throughout the EC all activities allowed by the legislation of its home country.

Thus, consumers will be free to buy financial services in whatever market they choose. Finally, the scope of banking is defined broadly, ranging from lending to leasing to securities trading and underwriting. The expectation is that through a process of competitive rulemaking, EC member states will gradually move toward similar systems of universal banking of the type we now find, say in Germany or the UK.

By and large this is all very good news for consumers and for the financial services industry. Barriers in consumer financial services are among the highest of all industries in Europe, so their removal will produce significant potential gains for consumers. Firms will be able to rationalize internal operations and to increase their efficiency.

However, there is also some bad news. For example, we may see an increase in industry concentration. So there will continue to be a critical role for EC competition or antitrust policy to ensure that there is no abuse and no discrimination against foreign based firms.

Second, protection against non-EC institutions may be a byproduct of intra-EC liberalization. Let me explain what I mean by that. The main concern about protectionism focuses on what Mr. Vargo has already mentioned, reciprocity clauses in the banking, investment services, and life insurance directives. According to the reciprocity principle, an institution based outside the EC will be permitted access to this new internal market, only if its home country grants reciprocal treatment to all EC financial institutions.

American institutions, for example, could be caught in this net because the U.S. maintains barriers between commercial and investment banking and because we do not have full interstate banking.

Now as you can imagine, this reciprocity principle came as quite a shock to the foreign business community in Europe. Under the EC's constitution, the Rome Treaty, a company, no matter what its parentage, has always been considered European for EC purposes if it is incorporated in Europe and if it does real business in any EC member state.

Now it seems, parentage may determine who is European. Mr. Chairman I like to think of reciprocity with a small "r" and reciprocity——

Chairman LAFALCE. Are you suggesting that if they went to reciprocity it would be applicable not only to the United States' companies doing business from the United States but to United States firms doing business within the EC?

Ms. SPERO. Yes.

Chairman LAFALCE. But that would be like cutting off their own noses. They just couldn't do that, it would kill their own economy.

Ms. SPERO. I agree with you and we've been trying to point that out to them.

Chairman LAFALCE. Yes.

Ms. SPERO. They are still, and I will explain this, they are still very much in the process of defining what they mean by reciprocity.

Mr. SISISKY. You said it would kill their economy?

Chairman LAFALCE. Yes.

Mr. SISISKY. It wouldn't do any good to us.

Chairman LAFALCE. No; but it would be more disastrous for them Norm. Go ahead, Joan.

Ms. SPERO. Reciprocity is a very slippery slope.

Chairman LAFALCE. Yes.

Ms. SPERO. I think it's useful to try to define what we mean by reciprocity, so if I could just spend a minute on that. As I said, as I see it there's reciprocity with a small "r" and reciprocity with a capital "R". The good reciprocity, the one with the small "r" is that negotiating principle that says that benefits should be roughly mutual. That's what it means in the GATT, that is what it has traditionally meant in U.S. trade legislation.

Then there is the reciprocity with the capital R. It means tit for tat, bilateral or sectoral balancing. It flies in the face of what we know about the real world of trade and it's very dangerous, as you suggest. The question is how will the EC define reciprocity?

Now the commission has somewhat allayed our worst fears, but not all of them. It moved away from this concept of mirror image reciprocity and said that reciprocity meant equivalent access or equivalent freedoms. However, they haven't defined equivalent. Also we've had some signals but not confirmed recently.

Chairman LAFALCE. It sounds as if they could be leading toward a definition of reciprocity that's synonymous with our definition of national treatments.

Ms. SPERO. They are moving in that way. National treatment would be very acceptable.

Chairman LAFALCE. Yes; maybe they'll give us the national treatment but call it reciprocity.

Ms. SPERO. Maybe; I hope so. I think they are moving, as I will point out, in that direction. They've modified it, first of all, to say that it's not mirror image, you don't have to have exactly the same laws as long as they're equivalent freedoms. Second, they have said that they are not going to apply it retroactively, and that means that, in banking at least they haven't said that in investment or in life insurance. So that if you are already established in Europe they say we will not apply the reciprocity principle to you. But that leaves open a lot of things. What about new businesses, what about a firm already established in Europe that wants to go into a new business sector, a banking firm that wants a securities license. And it also doesn't clarify what about institutions other than banks.

They also have been making noises recently that they may make reciprocity not automatic, but discretionary. So the implementation of reciprocity, its definition is still being debated in Brussels. We hope, Mr. Chairman, that they will come out with the definition that approaches more the concept of national treatment. I did not move in a direction of what's being called Fortress Europe or a Europe for the Europeans.

Let me briefly conclude with some thoughts about what U.S. business should be doing about 1992. Obviously each company must

examine its strategic position in Europe and determine for itself what business opportunities and competitive threats it will face. In addition, I believe U.S. business should and can try to shake the evolving policy of the community. American business should take the initiative to work with the European commission and member governments to shape the outcome of the internal market directives. I believe to an important degree that's possible.

I also believe the U.S. Government has a role to play. Washington and its outposts need to keep the EC honest on major trade issues like reciprocity. In fact, strong U.S. opposition to the initial EC reciprocity proposals has encouraged the community to think again. The United States also needs to stand ready to help U.S. business negotiate with the community in individual cases of trade discrimination. It needs to help provide, as Mr. Vargo has pointed out, information to those businesses which do not have a significant presence in Europe, especially small- and medium-size businesses which do not have the resources to keep abreast of the developments.

I want to emphasize this, the United States needs to push forward in the Uruguay round to keep up the pressure for opening markets. One point Mr. Chairman, that the EC has made is that one of the reasons they can talk about reciprocity and financial services is there is no GATT regime for financial services so they are not constrained in that area.

In short, the issue of 1992 needs to be on the agenda in Washington, but I want to conclude by saying it's not a crisis, it's not a reason for panic or retaliation, but it is a subject that I believe requires higher level attention. Thank you.

[Ms. Spero's statement may be found in the appendix.]

Chairman LAFALCE. Thank you very much. We'll need to ask some questions. I've already asked a few, so I'll defer mine until the other members of the committee have had an opportunity to ask theirs. This is a full committee hearing, and all of you are here, roughly at the beginning of the hearings, so we will call upon the members by full committee seniority. Let's see, is Mr. Skelton here?

Mr. MAZZOLI. No.

Chairman LAFALCE. No; all right, the next in seniority on the committee is Mr. Mazzoli. Mr. Mazzoli?

Mr. MAZZOLI. Thank you very much, this——

Chairman LAFALCE. Just a second. Ike, you're first up to bat. Do you have questions that you'd like to ask the panel?

Mr. SKELTON. No questions.

Chairman LAFALCE. Next in seniority, Mr. Mazzoli.

Mr. MAZZOLI. Mr. Chairman, thank you very much. I really have one question. That's interesting to hear everybody talk about the reciprocity, but I was interested in something which I had heard. It deals with the language and the possibility that there will be, more or less, formally adopted, a lingua-franca for international trade, a la the Western European EC in 1992. Is there any potential for that, or do we as a Nation who don't have linguae, and don't emphasize foreign language studies, do we continue to remain in a less advantageous spot because of this problem? Maybe I could ask each one of you in turn. Mr. Vargo, perhaps, to start it out.

Mr. VARGO. To the best of my knowledge, there is no such requirement. The community has a number of official languages, and English is one of them. The community has standardized a number of forms for trade. They've come out with a single administrative document, which is available to U.S. firms to use, and it is available in——

Mr. MAZZOLI. In English.

Mr. VARGO. In English. U.S. firms do use it, and we've heard from a lot of firms that this has reduced their costs. In some cases, this one form has got rid of up to 150 other forms.

Mr. MAZZOLI. Yes.

Mr. VARGO. I have never heard, honestly, any requirement to move towards a language.

Mr. MAZZOLI. All right; may I ask you one follow-up, then I'll ask each the same follow-up. For companies that do not have available people who speak any of the major Western European languages, are they in a serious disadvantageous position in hoping to become part of the language post-1992?

Mr. VARGO. There's nothing in the 1992 program that would exacerbate that problem, but I would certainly agree that companies that try to do business entirely in English are at a marketing disadvantage and have always been at a marketing disadvantage. That is one reason why we have a much higher share of the U.K. market than other EC markets. If memory serves me correct, I think we have about 20 percent of the imports of the United Kingdom.

Mr. MAZZOLI. Yes.

Mr. VARGO. A lot of American companies go over to the U.K. because they are comfortable with English. They don't have to change their instructions and packaging into other languages.

Mr. MAZZOLI. Yes.

Mr. VARGO. Some of our competitors are much more eager—much more export oriented than American firms, and they expect to translate all of the sales literature into foreign languages, while many American companies don't.

Mr. MAZZOLI. Very good. Mr. Calingaert?

Mr. CALINGAERT. I would just add that there is certainly no possibility that they will back away from having nine formal official languages. More and more is certainly done in English, and in that sense, we're lucky, because to the extent we're nonlinguists, it is English that is becoming more and more a business language. In fact, inside the community, a lot of discussion and work informally is limited to English and French in terms of U.S. business interest, clearly it is advantageous to be able to speak one or more non-English languages. That also means that it's good to look for associates who can do that, but I don't think that's an enormous disadvantage.

Mr. MAZZOLI. One quick follow up. Are international conferences, say for example, in Brussels, conducted in English, or are they conducted—or do they have the translations that go through the earphone?

Mr. CALINGAERT. All of the formal sessions are with interpreters. Indeed, an enormous part of the staff of the commission is interpreters.

Mr. MAZZOLI. Thank you.

Mr. CALINGAERT. The expenses.

Mr. MAZZOLI. The expenses. Dr. Spero?

Ms. SPERO. I think the point has been made about the use of language. Let me just add one footnote to what Mr. Vargo said about marketing advantages.The community will end up, if you will, in different degrees, as one legal market. The barriers will come down in financial services and other areas. Because of these linguistic and cultural differences, however, we don't expect that there will be one European Market in the sense of our having to create products. We're still going to have to create an American Express Card, or——

Mr. MAZZOLI. Still for——

Ms. SPERO. Other products products for a whole variety of cultural markets. But we will be able to create products for markets, instead of creating them for regulators.

Mr. MAZZOLI. Yes; so you don't really see any breakdown within the EC of language barriers to the extent that they may themselves somehow agree upon a language—you consider that they will—a German will speak German, and a Frenchman will speak French, and so forth, and they will maybe, privately over drinks, speak one language which they can agree upon, which could be English, but may not be, but they will not in a formal setting—you don't see in 1992, or in the few years thereafter, moving any toward a kind of agreed-upon language—because am I not correct, is not the language of the air English? Pilots, English—pilots, whether they're Korean, Japanese, or Russians, everybody speaks English. But you don't see that occurring in this setting?

Ms. SPERO. No; I don't.

Mr. CALINGAERT. Not on the ground.

Mr. MAZZOLI. Not on the ground. Thank you very much. Thank you Mr. Chairman.

Chairman LAFALCE. Thank you. Mrs. Meyers?

Mrs. MEYERS. Thank you, Mr. Chairman. This is an interesting subject, and I went to a meeting this last year of the North Atlantic Alliance which is the political arm of NATO, and I'm on the Economics and Trade Committee of that group, and I became aware of how little understanding there is on attitudes on either side of the Atlantic toward trade, and how difficult it's going to be for us to understand each other in this regard.

For instance, at the time, there was great concern on the part of the Europeans about our bilateral agreement with Canada, and what it would mean to them. They fear that bilateral agreements would reduce the importance of the General Agreement on Tariffs and Trades [GATT].

They take all of our election year rhetoric, or they seemed to, very seriously, and they were talking a great deal about what a tremendously protective country this is, and their great fear of that, and of course, I come from a district where if I were a protectionist, I could not be elected. I listened to this for about 1 full day, and then told them that a great portion of the country was not at all protectionist.

There is going to be a great—I think a lot of fear on both sides of the Atlantic here, and we're going to have to develop a lot more

understanding of each others problems. I have three or four questions that I'd like to address to Mr. Vargo. I think some of these you touched on in your testimony, but I'd like you to elaborate on them. What is the Commerce Department doing to prepare U.S. small business for EC-1992?

Mr. VARGO. The most significant thing that we're doing to prepare small businesses is to make them aware that there is such a thing as 1992. We have, as I noted, sent out over 100,000 of these brochures to American industry to alert them to the major changes and opportunities that are occurring in Europe.

It is important for small companies that now export to Europe to recognize that it's going to change. Some things will make it better, some make it worse—but it's going to change, and U.S. companies have to begin looking into it and doing something about it.

The second thing we do with small business is offer assistance to help them figure out how to improve their position in Europe, and to help them extend their marketing efforts in Europe. That's one of the most major things. Many small American companies—if they're exporting to Europe—they export principally to the United Kingdom, perhaps Germany, perhaps one other country. Most probably, they do not export to a majority of the countries in the community; and after 1992, as the EC gradually becomes one large single market, their competitive survival is going to require that they increase and extend their marketing efforts in Europe.

Mrs. MEYERS. Thank you. Has the Commerce Business Outreach Program been effective in getting the message out to U.S. companies that they need to prepare now for 1992?

Mr. VARGO. There are many small manufacturers in the United States. Many of them export, most of them do not. We have been encouraged by our first mailing. We have received 3,000 or 4,000 responses out of this blind mailing of 100,000—which the people in the direct mail industry say is a very high response—but this is just the first of many mailings that we will do.

We have started a program of intensive counselling—market counselling, with smaller companies that are interested in beginning to export to the EC, or that are interested in expanding their marketing efforts in the EC. We have found that the single-most important determinant of whether or not a company will export, or will expand it's exports, is the interest of the management. So when we find a company whose management is interested in expanding, then we latch on to them and work with them on a continuing basis. And it works.

Mrs. MEYERS. Your testimony sounded largely optimistic about opportunities offered by EC-1992. What are your main concerns about EC-1992?

Mr. VARGO. We are optimistic that the market will expand and create opportunities for a whole range of American companies. However, there are areas where we most definitely have concerns, and I've alluded to some of those in my testimony. Certainly the standards, testing, and certification areas are where we have our largest problems.

American industry does not have a way of trying to minimize incompatibility between American standards and European standards. To the extent to which this incapability can be minimized,

then smaller companies will not have to produce different products for the European market and for the American market.

On the other hand, many smaller companies tell us that they would rather have a different standard in Europe, as long as it's one standard, and they don't have to produce 12 different variations within Europe.

Other areas where we have concerns are in the testing and certification area.

We have concerns with many individual directives. Again, principally related to standards or to testing, there are areas in which American companies can now self certify, saying that they've examined the standards, saying that their product meets the standard, and they can go ahead and export. If these companies will have to ship samples of their products over to Europe and get them tested in European labs on European soil, that will be a very detrimental thing, so this is another one of the key problems that we're working on now.

Mrs. MEYERS. Do you believe—if I could, one more question, Mr. Chairman—is Japan ahead of the United States in its approach to EC–1992?

Mr. VARGO. Japan has a slightly different set of concerns than we do. They are focused principally on the existing European quotas on automobiles and other Japanese products. There have been in existence for a long time by a number of European countries. Italy, for example, has a quota of 2,000. Is it 2,000?

Ms. SPERO. Three thousand.

Mr. VARGO. Three thousand Japanese cars a year. The Japanese concern is that after 1992, since there is supposed to be free internal movement, what happens at the border? Are they going to convert these national quotas to Europe-wide quotas? That's where their emphasis has been. Also, Japanese companies both exporting to the EC and producing in the EC, I think have been way behind American companies in developing the market. So they're playing catch up.

Mrs. MEYERS. I thank you Mr. Chairman, and thank you Mr. Vargo.

Chairman LAFALCE. Thank you. Mr. Wyden?

Mr. WYDEN. Thank you very much, Mr. Chairman. Let me start with you, Mr. Vargo. I'd like to know, if any coordination is going on between the changes in the EC in Brussels, and the talks—the ongoing talks with the GATT Uruguay Round. The reason that I ask that is it seems to me in some of the key areas like agriculture, with the beef situation, which has been well documented, the wood product situation, things seem to be pretty glommed up on the gap side right now.

What are we going to do to coordinate in these two areas, because it seems to me that if we don't, what's going to happen is you will see possibly unilateral action taken by the EC countries. I would like to know what, if any, coordination has taken place between those two discussions.

Mr. VARGO. You're absolutely right that this is a key area. In addition to agriculture, for example, I could add government procurement in other areas. The EC for example, is moving internally to open up previously closed areas, such as telecommunications, water

authorities, and this sort of thing, that have been closed to each other.

A French Government entity wouldn't buy any German products, et cetera. They are opening this up internally, but they are requiring a 50 percent local content, so this is only being opened up internally, not to us. This is something that if we are going to have open access to it, we're going to have to get it through the government procurement code in the GATT negotiations. Standards interrelates also with the GATT negotiations, so the coordination, again, is through the USTR.

Mr. WYDEN. Is that taking place now?

Mr. VARGO. It is taking place, and if I could explain one of the—the first thing we have to have is good information as to where our problems are. The Commerce Department went out to trade associations and American industry, and we now have all that information. At this time we are sifting through it, coming out with our first draft, showing where the problems are.

This will go into the interagency process through this USTR EC committee, and will then be taken up with the groups that are concerned with the Uruguay Round, with standard, with government procurement, and that sort of thing.

Mr. WYDEN. So the USTR is in effect, honchoing the coordination between EC and GATT?

Mr. VARGO. Yes.

Mr. WYDEN. They're in charge?

Mr. VARGO. Yes; they're the GATT switching center where everybody brings their concerns, and we come out with a solution that way.

Mr. WYDEN. The only other question that I have right now, deals with local content regulations. It seems to me that these in and of themselves are going to blow small business out of the water. As far as tapping these prospects, a larger company may be able to do it, say in electronics, but if we don't do something to fight these local content regulations, small business isn't going to be a player in this. You just aren't going to be able to get in. What are we doing now to fight local content regs that they are developing?

Mr. VARGO. A couple of things here. First, the applicability of local content regulations is important in government procurement. Government procurement is a big sector of Europe. In some countries, government procurement is up to 20 percent of the GNP. That's enormous. So when we have local content, they're closing us out. That closes a lot of market opportunities, and this is something we absolutely must take up in the GATT.

Other local content requirements pertain to their dumping regulations, and to the ability of American products to move without tariffs within the community. So as part of this process—and working with industry—what we have done is to come up with a list of items that are of the greatest concern. It's not just the local content requirements, also rules of origin, determining how that gets into local content, stipulating how much has to be of EC content.

Mr. WYDEN. All right; my time I think has expired, but could you just tell me what areas are now of greatest concern with respect to the local content rate?

Mr. VARGO. The government procurement generically, semiconductors, are two that I would name, and I can go back and look over the——

Mr. WYDEN. Health care——

Mr. VARGO [continuing]. Documents and get back to you.

Mr. WYDEN. Health care company, equipment—medical equipment?

Mr. VARGO. The principal problems in medical equipment that we have heard from U.S. industry have been more in the area of testing and certification.

Mr. WYDEN. Mr. Chairman, I'd really like to pursue this with you in particular, as far as the U.S. trade rep is concerned. Because it seems to me that we could really see small business fall between the gaps. Things get glommed up over there at GATT, the EC Community tries to go unilaterally, and small business just gets the shellacking because their interests fall into the gap between these two forums.

Chairman LAFALCE. Yes; I would be pleased to. I've already discussed this with Ambassador Carla Hill, as a matter of fact, and discussed the special import that I want her to attach to the small business community in her negotiations wherever they may be and whatever the issue, but particularly with respect to 1992. We did this about 2 weeks ago, shortly after the inauguration. All right, thank you. The next senior member, Mr. Sisisky.

Mr. SISISKY. Thank you. Just to follow up, I think the medical equipment is another problem over there, and the certificate of need, where the government holds up allowing the certificate to be given on American made products, at least that's what I heard. Mr. Vargo, you first, how large is your staff at the Department of Commerce? It's responsible for tracking the progress of EC–1992?

Mr. VARGO. I have on my staff working full time on EC–1992, including the officers who are doing export promotion, those who are working with examining the directives, the policy, the whole thing, full time, close to about 25 people.

Mr. SISISKY. Twenty-five people?

Mr. VARGO. Yes.

Mr. SISISKY. So that means you don't have any people out in the field—in the States, is that correct?

Mr. VARGO. That's on my immediate staff. Now the program working on 1992, of course, transcends my staff. We have set up a coordinating group within the Department of Commerce to focus attention on this, and get everybody working together. For example, in the industry sector part of the Commerce Department all of the industry analysts have been working on the directives that effect their industries, touching base with the trade associations, and doing the analysis in a way that my own European staff could never do.

We just don't know the industries as well as they do. We work with the U.S. and Foreign Commercial Service. The District Offices, for example, are operating the seminars that I referred to—and some of them are listed in this brochure. Our U.S. and FCS foreign commercial offices overseas and Europe are working on delivering both trade fairs and matchmaker shows. They are working

with the individual companies that are interested in expanding their exports to Europe.

An individual company will call our one stop shopping number, we will assign a marketing officer in the Department of Commerce to work with the company, and get the company to——

Mr. SISISKY. So you do have people out in the field?

Mr. VARGO. Yes, sir.

Mr. SISISKY. Away from Washington, DC.

Mr. VARGO. Yes; we do.

Mr. SISISKY. You have an 800 number, although you gave it 202?

Mr. VARGO. We don't have an 800 number.

Mr. SISISKY. You do not have an 800 number?

Mr. VARGO. No, sir.

Mr. SISISKY. I thought you said that you did, that's why I wrote down 202. That doesn't sound like an 800 number.

Mr. VARGO. No.

Mr. SISISKY. I am really. I'm not critical of you, perhaps of your Department. You did mention a blind mailing. It's frightening, because as I understand it, we have no data bank in the Department of Commerce of where we're exporting, and what we're exporting. I understand that you're developing one.

Mr. VARGO. We are.

Mr. SISISKY. I understand it's being developed but I don't know for how many years. Tell me how close we are to developing it, because if we do not have information, how in the world can we have a sound thing for doing business? No business can operate without information. I don't know what the problem is, the holdup, when you have to send 100,000 blind mailings out, I mean it would just seem to me, that if you had the data bank, you could zero in into those fields, and when are we going to get the information bank? That is what we're really talking about.

Mr. VARGO. Yes, sir. You've asked a couple of questions, and if you'll bear with me, I'll take them in order. First of all, the small business—or the exporter data bank that we're building. This is something that we have wanted for a long time. We have been unable to get it over the years because we have not known who was exporting. We don't follow up on that.

The Census Bureau in 1987, I believe, for the first time started requiring that the SED, the Shipper's Export Declaration, the piece of paper that you got to give in order to get the product out of the country so we can keep track of it, began requiring the unique identification number for the company. So for the first time now, we can process the Shipper's Export Declarations, run them through the computer and find out company by company, establishment by establishment, who's exporting what to where.

Now the Census Bureau is very good about not giving out information on individual companies, and they will not do that, but they will be giving information on the numbers of companies by industry, how many shipments they're making, the number of companies exporting to Germany, to Britain, et cetera.

The pilot runs of this data base have already come out, and they're very encouraging. One of the early things—I used to run the research office in Commerce, so I am aware of some of the diffi-

culties here—one of the early things is these identification numbers.

Were they garbage, or were they real? Were people saying, "Well the Government wants a number, so I'm going to put any number in that box," or were these the genuine numbers that would match with the other information? And a very, very high hit rate came up. About 97, 98 percent, these were valid numbers. So we could work with that, and we have a first set of runs that are giving us the first information we have had on how many companies are exporting to the individual companies of the world, including the individual European companies.

Initial information, for example, indicates, if I recall it, about 30,000 U.S. companies exporting to the United Kingdom, something in the range of 18,000 to Germany, and then it starts to drop off. Now we do not yet know which of these are large, and which of these are small. We can tell so far the total amount of exports by company and establishment, but we don't know if that was a small company, or if it was a large company exporting a small amount. So——

Mr. SISISKY. Can you——

Mr. VARGO. So I'm very optimistic, sir, that——

Mr. SISISKY. I understand. That's what you were going to discern, though, in this data bank. We were interested, obviously, because this committee's jurisdiction is small business, and there's absolutely no information on what we're exporting. Am I correct about that?

Mr. VARGO. Yes; the next step then, is to relate this to the other census data which lists establishments by size. I don't want—this is not under my immediate jurisdiction in Commerce—so I don't want to commit anybody. I'm optimistic, and I've seen the first results, and I think before too long, we'll be getting some very good information. We're pushing very hard for this, because you can understand what a difference it would make to our export promotion efforts if we could pinpoint on what's going on here.

Mr. SISISKY. That's an understatement. That should be——

Mr. VARGO. Yes, sir.

Mr. SISISKY. I was hoping the Secretary would be here, because to me, it is an absolute first priority.

Mr. VARGO. We appreciate the committee's interest, and——

Mr. SISISKY. I have some more questions, and I guess you'll have another answer.

Mr. VARGO. Could I answer the second part of your question of blind mailing?

Mr. SISISKY. Sure; go ahead.

Mr. VARGO. We didn't send this out in a blind mailing because we had no alternative. It was a deliberate choice. We wanted to reach those companies that weren't exporting. We have a list, a Dunn and Bradstreet list, I believe, of U.S. companies, and of U.S. industry, the vast proportion of which do not export. They are not in our files. We have a file now of over 6,000 companies that export to Europe, and we communicate with them regularly, but we wanted to reach the other companies, so that's why we sent it out so broadly.

Mr. SISISKY. I have no problem with the blind mailing, I was trying to relate it to——

Mr. VARGO. I understand, sir.

Mr. SISISKY. One of the reasons you did it——

Mr. VARGO. Yes.

Mr. SISISKY. The 3 percent return, I think you have, is not really bad.

Mr. VARGO. No, no, it wasn't.

Mr. SISISKY. I'll ask some other questions later.

Chairman LAFALCE. Thank you. Our next senior member, Mr. Torres.

Mr. TORRES. Thank you, Mr. Chairman. First of all, I want to commend you for the kind of meeting we're having here. It's very enlightening to most of us. I should simply like to tell the members before I ask a question that—and I'm sure the chairman is aware of this, we have here in Congress a joint U.S. congressional delegation that meets biannually with the European parliament.

We have just returned from Europe after a lengthy meeting both in Paris and Brussels on these very same questions. I wish Mr. Mazzoli would have stayed, because his question on the language aspect created quite a bit of concern in the last meetings that we had in Europe.

They have the same interest in this issue of which language might be a single language used in European Community endeavors, and they were specifically asking us about the English-only movement in this country, and what implications that has for this country.

In the European parliament, the Spaniards, the Greeks, the Portuguese, and the French, are also concerned that maybe at some time down the road, they'll have to move toward a single language, and they were inquiring us on it. I'd like to get down to the question about reciprocity in the financial institutions. Both the chairman and I, serve on the Banking Committee here in Congress. And while we were in Europe, the issue of banking reciprocity came up, indeed, many times. Especially, with the EC commissioners in Brussels, they were never clear, really, on what reciprocity means, and as Ms. Spero said, there's the big "R" and little "r", and they would never really commit themselves to any real definition.

It is understandable, given that we have Glass-Stegall in this country, and we have in the insurance area, McCarrom-Ferguson. They used those items of legislation to avoid answering us on the question of reciprocity. I was struck by your comment that we don't have a crisis in that area.

Recently, we met with the Bank of America, and their officials, and they are already beginning to recognize a crisis. They are moving their European operations, to London, because it appears that's the only place where it can really work. Is there really not a crisis in this whole area of reciprocity? It appears there is. I would direct that question to Ms. Spero.

Ms. SPERO. It's how you define crisis. What I was trying to convey is that this is a very serious issue, and we need to be working very hard at it both from a Government perspective, and frankly from my own individual company perspective. We, for example, have a government affairs office based in London. We are very seri-

ously considering moving that to Brussels, because we are finding that much of our, if you will, lobbying activity really has to do with Brussels.

One of the key issues that we are focusing on is reciprocity. I myself was there 2 weeks ago to meet with officials, and communicate our concerns. So it is a very serious issue, and I don't mean to minimize that.

I think what I'm trying to convey is that I think that through persistent, serious, forceful efforts, we can move the community on this issue. I am thoroughly optimistic about that, so I guess—no panic, but it's a very critical issue, and I don't mean to minimize it at all.

Mr. TORRES. Thank you. Yes, sir?

Mr. CALINGAERT. I just wanted to add that I think the community latched on to what seem to be a very plausible idea without thinking through what was involved. The basic idea, if they were opening up the market, why not ensure that there was a similar treatment in the other countries.

It was certainly not aimed at the United States, where they are very well treated, it was aimed essentially at Japan, where there have been problems with European banks, and I think as the issue has come into public debate in large part, because of concerns expressed in the United States, that they are beginning to wonder about all of the implications, they've backed away from the idea that it would apply to existing institutions, and it's something clearly we have to be—have very much up front with them.

Mr. TORRES. Thank you. Mr. Chairman, in the interest of time, I yield back the balance of my time.

Chairman LAFALCE. Thank you very much, Mr. Torres. Our next question, Mr. Bilbray?

Mr. BILBRAY. Thank you, Mr. Chairman. Most of my questions have been answered already, but I have one that I know will be near and dear to the heart of the Commerce Department. The biggest complaint I get in Europe, basically from people at the embassies, including representatives of the Department of Commerce, is the budget problem of helping American businesses in Europe because of severe budget cuts, and of course the devaluation of the American dollar. What is the prognosis for the next few years of the Department of Commerce's ability in Europe to help American businesses to the level they did, say, 4 or 5 years ago?

[The answer to Mr. Bilbray's question may be found in the appendix.]

Mr. VARGO. I am not in a position to forecast our budget or our administrative people would holler at me if I got into budget discussions. But I can tell you that within whatever budget we have, what we are doing with our European operations through the U.S. and foreign commercial service is to seek the most efficient ways to target our services on those companies who want to expand their sales in Europe.

We're looking for ways in which we can offer a greater variety of efficient low cost services to American companies, particularly smaller companies. I would like to mention, for example, the matchmaker show that was developed by the Department of Commerce. This is a unique way for smaller companies with a relative-

ly short trip of a week or less than a week to be able to make 20, 30, or 40 solid business contacts and arrange agents and distributors.

It's efficient for them, it's efficient for us, and we are moving more in this direction. So this service, other services, and helping American companies find distributors, which is really the key for smaller companies or areas that we will be concentrating in, whatever our budget.

Mr. BILBRAY. What I'm getting at is basically, talking to businessmen who have dealt in Europe over the last few years, also in Asia, is that 2 or 3 years ago, because of the value of the dollar, you offered a lot of services that have been curtailed in the last few years. To me it's a big concern because it's one where we lose business and we lose money because we're not providing the services. What my question is, is where do we have to go to get the Department of Commerce's budget in line in these markets, so that American businessmen that come over can be offered the same level of services as they were several years ago. I understand what you're doing, you're finding lower cost ways of trying to help them. But some of them, unfortunately, lose targets of opportunity when we make these cuts. What I would like to see is something of a projection, because before this I served on the Foreign Affairs Committee, now on Armed Services, so I don't get exactly the same figures.

I would like to see exactly where the Department of Commerce's true budget was, say 3 years ago, for helping American businesses in Europe. And, with the devaluated dollar what that buying power is today and what services have been cut to American businessmen that were provided, 3, 4, or 5 years ago that you would like to provide today to help us do better in the European markets.

Mr. VARGO. I would be very pleased to go back and get an answer, a comprehensive answer from our budget and administrative people.

Mr. BILBRAY. Thank you.

Chairman LAFALCE. Thank you. Mr. Lancaster?

Mr. LANCASTER. Yes; Mr. Calingaert indicated in his remarks that this was not something that was going to miraculously occur on the last day of 1991, it was really a process. I wonder if you could address that a little bit more. What is the level of cooperation between the countries and implementing EC-1992 and how close are we going to be in 1992 to a real working plan that does, in fact, unify Europe as a single economic entity?

Mr. CALINGAERT. The process of getting the countries together, of course, depends a bit on the issues. Arriving at decisions is facilitated by moving from unanimous voting to weighted majority voting, indeed that's helped unblock some issues. However, in certain key areas, particularly taxation, unanimity is still required. For that, as well as I think for other reasons, it's very hard to get to a point where there will be a single sort of taxation system.

My guess is that by the end of 1992 the community will have put in trained capital liberalization, recognition of professional qualifications, academic degrees, and that it will be down the path of deregulation of services. Certainly I think there will be acceptance of the principle that Dr. Spero mentioned of home country control, at least in certain cases. Some progress will take place on the legal

issues, although the so called social agenda, I think, is going to be difficult to deal with.

In public procurement, I think they will complete a considerable amount of the legislation, because of the interests involved it will take quite a while for that actually to be implemented.

On standards, by all counts they're doing very well. Most people I talk to say they're surprised the process is working as well as it is. Nevertheless, an enormous area.

As for the borders, particularly as regards taxation, I don't know. I think they will certainly be able to minimize or reduce border controls, but there are just too many things that concern the individual countries and that they feel these will have to be regulated at the border.

Mr. LANCASTER. So 1992 is really not going to be a smooth working entity, but really just almost the beginning of the process?

Mr. CALINGAERT. Yes; I think one should not look at a particular date and say that of that date, the program has been completed or not, or expect that on the December 31, 1992, someone will run a flag up and say here it is. In all of these issues there is a continuous process. All we can say is that by the end of 1992 they will have done many important things.

Mr. LANCASTER. Mr. Vargo, how does the plan modify the common agricultural policy? If it does affect it, what does this mean for agricultural trade and is the current hormone ban an example of things to come in that area?

Mr. VARGO. The Common Agricultural Policy has been giving us trouble for a good many years. The 1992 program per se, has little, if any, effect on the Common Agricultural Policy. There are many agricultural regulations to ensure that agricultural products that move internally are healthful, good for consumption, et cetera.The standards of the countries vary, and they are having a difficult time in harmonizing those. But that doesn't affect the Common Agricultural Policy, and particularly the barriers to U.S. exports of agricultural products to them.

The hormones directive was part of the 1992 program. I'm not aware of others in the agricultural area of a similar nature, but Mike, do you know of any? OK, Mike, can add to that in just a moment.

In general the 1992 program will not have that much of an effect one way or the other, on the agricultural position in Europe. That's a serious problem and it is one that must be very carefully addressed—and it is receiving a lot of attention. But EC–1992 won't change it, to my understanding, very much one way or the other. Perhaps Mr. Calingaert, who literally wrote the book on EC–1992, will elaborate.

Mr. CALINGAERT. I think the hormones is a good example of what can happen with standards. To the extent that the community establishes one standard rather than 12, that is good because it means trade flows more easily. What is also terribly important is what is that new standard, and in this particular case, from a U.S. perspective, it was the wrong one. We are certainly far worse off than we were before.

There are a whole number of plant and animal health controls and regulations which the community is trying to standardize so

goods can flow from one country to another. However, in this area the community has been slowest in putting proposals on the table, because of differences, complexity of issues and so on.

I think it is going to prove difficult for them to do so, and indeed in many product areas we will be concerned about what they ultimately decide on.

Mr. LANCASTER. One last question for perhaps the whole panel. Mr. Wyden mentioned in his opening remark that he hoped that this would not lead to Fortress Europe. Is there anything this country can do to ensure that that attitude doesn't become prevalent as we move through this process?

Mr. VARGO. They're not setting about to create Fortress Europe, they're setting about to remove the internal barriers. But the process of doing so over time is a very difficult one. It will not be a nice smooth process that benefits everybody within Europe. As individual companies and regions find that they are losing out to others—if they turn to their capitals and say this wasn't what we bargained for, we thought this was going to get better and not worse, et cetera—then we have a problem. It is incumbent upon the U.S. Government to make it plain from the beginning. We have been doing so. But this is not something that we can accept.

I do think that the process is one that we have to watch very carefully because it will gradually unfold—and in many areas very little is known, particularly in Brussels, about how this will come out. So it's a process we have to watch very carefully and one where we have to press forward our point of view for an open market very carefully.

Mr. CALINGAERT. Certainly there will be pressures in the community in both directions, that is, both in opening and in closing. As Mr. Vargo says, a lot will depend on how this process takes place and how the people in the community perceive the extent to which they are beneficiaries of the EC-1992 program rather than the outsiders. It is very important, I think, to maintain the dialogue with the community, not only at a government level, including the legislative branch, but also the business community, emphasizing to the community the common interests we have in maintaining an open system.

Mr. LANCASTER. Care to comment?

Ms. SPERO. Yes; I think that the point is that there is a very complicated debate going on in Brussels. There are a number of Europeans, both at that national level and within the commission, who are very concerned that creating the internal market may lead to benefits, not for the Europeans but for the Americans and the Japanese. We would be kidding ourselves if we didn't admit that that is very much on many peoples' minds.

At the same time, there are equally strong forces in Brussels and in the national capitals that are saying the only way we're going to benefit is to keep the European market open, we can't afford a Fortress Europe and we don't want a Fortress Europe. So our Government needs to be working in Brussels but also in the national capitals. Because the national capitals send instructions to their representatives in Brussels. So we need to make it very clear at both levels.

I would also point out that creating the internal market is a very exciting, dynamic challenging effort for Europeans and it's taking a lot of the energies and the political attention of people both in Brussels and their national capitals. It very well may be a higher priority for them and a much more real thing for European business than the GATT, or the Uruguay Round, which for many business people seems airy fairy. Whereas 1992 is very real, it has real business implications for them.

I am concerned that we use the GATT round to keep Europe open. We did that earlier in the Kennedy Round. I think it's very important for that reason that we push the Uruguay Round.

Mr. LANCASTER. Thank you.

Chairman LAFALCE. Thank you very much. Mr. Poshard?

Mr. POSHARD. Thank you, Mr. Chairman, ladies and gentlemen of the committee. Mr. Chairman I have no questions at this time. I'm caught between two committees here this morning and we're discussing the child care issues in the Education and Labor Committee, but I ask your forbearance and I have no questions at this time but I thank you for these hearings, they're very important.

Chairman LAFALCE. Certainly, no problem at all. Let me just ask one question. What is the status of any efforts, if at all, to go toward some common currency?

Mr. CALINGAERT. The European Council decided last year to study the issues relating to monetary cooperation—coordination of economic policy, possible common currency, and central bank. The study is supposed to be completed for another meeting of the council, and this is at heads of government level in the middle of this year.

As you know, some countries, particularly Britain, are very strongly opposed to this. What is remarkable is that over the past year or so it has become a common subject of discussion, and of interest, and there are a lot of people who believe that it is the logical continuation of the effort toward forming a single market—indeed that it is not possible to remove all of the barriers they're talking about without moving in that direction.

Chairman LAFALCE. If the British are the chief opponents, who are the chief proponents of this concept?

Mr. CALINGAERT. The French, probably the French, are the ones who raised the issue in the latter part of 1987. But in the community generally I'd say most countries think that subject is something they ought to be talking about and looking toward.

Chairman LAFALCE. Do they have, short of a common currency, some strong coordinated efforts regarding stabilization of the currencies? So that they do not have volatility or pegging and therefore unfair competition next to each other?

Mr. CALINGAERT. In 1979, I believe it was, they formed the European Monetary System, which brought together what was, I think then, the 10 currencies of the member countries in a coordinated mechanism. Although the British pound is not part of that, there are established relationships among the different currencies which have to float within those particular boundaries.

Chairman LAFALCE. Do they act together in concert with the G–7 countries when we try to discuss coordinated exchange rates? Do they try to act as a unified group in dealing with the United

States, Canada, Japan, et cetera, when we try to stabilize the levels between our different currencies?

Mr. CALINGAERT. As far as I know those various mechanisms, the G–7 and other groups, do not involve the European Community as such, but just the major members or certain members. But I think Dr. Spero can probably answer that better than I can.

Ms. SPERO. If I may just give a couple of responses to your first one. First of all the——

Chairman LAFALCE. This is so important, it seems to me.

Ms. SPERO. It is, you're absolutely right. The logic of opening up financial services markets is that there's going to have to be greater coordination first, of exchange rate relationships. Because, for example, the capital liberalization directive has a great destabilizing potential. You will be able to have greater movements of capital, and therefore there is a possibility of greater variation in exchange rates, so there's going to be greater pressure and greater interest to maintain exchange rate relationships.

So I don't see a common currency in the near future, but I do see greater and greater coordination in the European monetary system. The next step will probably be greater consultation and coordination on macroeconomic policy, which they are already doing more than the group of seven is now.

So that leads to the second question, which is how do they relate to the group of seven? They are further down the road in exchange rate coordination and further down the road in macroeconomic policy coordination. However, I think it's useful to think about the European system as a deutsche mark zone. The deutsche mark is the common currency, and as the deutsche mark goes, so goes the European monetary system. Therefore, the key relationship, in my view, is the coordination that Germany provides with the group of seven and then subsidiarily the coordination among Germany and its fellow members of the European monetary system.

Chairman LAFALCE. That's interesting. I'm sure the Germans agree, but I'm not sure if the French or the British would agree.

Ms. SPERO. No; I don't think they'd agree. They would agree they have kept their currencies pegged essentially to the deutsche mark, and it is essentially the deutsche mark that floats against the dollar.

Chairman LAFALCE. All right, very good. I'm sure we would have a lot more questions but we also have a second panel we want to get to very much. So Dr. Spero, Mr. Calingaert, Mr. Vargo, thank you very much for your fine participation. If we have any further questions we will be calling upon you. Thank you.

Our next panel should please come to the table.

Our first witness will be the Hon. Frank Swain, the Chief Counsel for Advocacy of the U.S. Small Business Administration. Mr. Swain, welcome back.

TESTIMONY OF FRANK SWAIN, CHIEF COUNSEL, OFFICE OF ADVOCACY, SMALL BUSINESS ADMINISTRATION

Mr. SWAIN. Thank you, Mr. Chairman. I'm pleased to appear before you and the committee to discuss the issue of small business exports and Europe 92. Mr. Chairman, I have a statement which

I've supplied to the committee, and with your permission, I'd like to, rather than read that verbatim, try to hit the high points.

Chairman LAFALCE. Without objection so ordered.

Mr. SWAIN. Europe is a large market with obvious culture and political similarities to the United States, and I think it's important that this committee, and indeed, all of our relevant and Federal policy making bodies that take a close look at what the EC-1992 program means to the potential for U.S. exports in general, and particularly for small firm exports.

Our basic dilemma in analyzing the U.S. export records is the general lack of information of the current level of involvement of U.S. small businesses in exporting. The implications of this information to our Government's trade policy as well as to Government's role in export promotion programs is important, but there has never been a creditable estimate of the values of small business exports, as Mr. Sisisky's discussion with one of the previous witnesses indicates. However, I guess I'm here to say, Mr. Sisisky, that if you didn't know 10 minutes ago, I'm trying to give you some information now as to what the amount of small business exporting is, as a percentage of the total U.S. exports.

Our statement walks through the methodology, but I will try to jump to the conclusion—the basic problem is as described by Mr. Vargo previously. The Commerce Department knows who exports in terms of the companies, and there are also ways that you can find whether companies are small or large, but no one has ever matched up the one set of data that tell whether a company is small or large, and the other set of data that tells who is exporting.

Commerce, as they indicated, has a project underway on that now, but we did a project like that in an earlier study, and the results have just come in. The sum and substance is that we estimate, based on the study that we did, of the companies that exported in 1985 by vessels, that is by boat, that were matched with our data base in whether they were small or large, that about 12 percent of the total value of exports came directly from small firms. That is, firms with fewer than 500 employees.

In addition to the 12 percent of direct exports, our study estimates that because a lot of exporting is done through brokers and various other intermediaries, that at least half of that is attributable to small firms. So the total we believe is that $1 in $5 in American goods exported overseas is derived from small firms, that is firms with fewer than 500 employees.

Our study specifically gives a lot of detailed information about what areas of the country these exports originate in, and what areas of the world they go to. Across the board we believe that it is a reasonable and conservative estimate that approximately $1 out of $5 in the value of American goods exported is originating from small firms.

It is probably an understatement because our study doesn't cover everything. Our study doesn't cover exports by other modes of transportation other than vessels, so we don't pick up air, we don't pick up train and truck, which of course, is the most frequent method of transporting goods to Canada and Mexico.

Another important factor is that neither our study nor any other study that I'm aware of has been able to identify with any compre-

hension, the value of service exports, which we believe is a very important potential market for small firms. We do believe that of our total exports, that about 20 percent of them derive from small business, and certainly the consequences to U.S. export policy and the small business development policy, I think, are highly significant. The earlier statements this morning indicate that the annual direct exports—the merchandise exports to the European Community, for instance, have been running approximately $75 billion a year.

I think it is a reasonable extrapolation that probably in excess of $15 billion of that is currently in small business, and I think that because of factors that we report in our statement, and others have alluded to already this morning, there's the potential for that going much higher.

In terms of employment, there are about 350,000 small manufacturers, and your earlier question touched on the fact that not very many of them export. We think that probably about 1 out of 6 or 1 out of 7 small manufacturers export. Those 350,000 small manufacturers employ about 7 million people total, which means right now, we think, that about 1 million employees of small U.S. manufacturers are probably involved in some sort of export driven activity directly, and of course that doesn't take into account those manufacturers that supply other U.S. business with subparts, which are eventually exported overseas.

I think that it's important to note that small business does have a major stake in exporting in general, and has a major stake in exporting to the European community, and there are several factors that make the European community an attractive market.

Before we get to the EC–1992 issue, English is a common spoken language, not certainly the only language, but a common spoken language in many EC countries.

There is a well established distribution system by air, truck, and rail. There is a sophisticated financial system in place. There is a network of U.S. Government commercial officers available throughout the community. Many companies in the United States already do a certain level of business in Europe, and most importantly I suppose in the real world, there has been a significant decline in the dollar against European currency since early 1985. Although that is troublesome to commercial officers that are attempting to live and work in Europe, that's good news for American companies that are attempting to sell their products in Europe.

As great as the potential business from an EC single internal market may be, as previous witnesses have pointed out, there are some difficulties. At this time it's still too early to determine if the internal market will be a truly open market. Product standardization may be implemented in such ways to disadvantage or exclude U.S. competitors.

I might add, Mr. Chairman, it's interesting to me to note that the standards issue is approached entirely differently in this country than it is in Europe, and I think some of the witnesses on this panel will touch on this, but in this country standard setting is largely a voluntary operation. There is a voluntary national nonprofit organization. There are voluntary industry associations—the Government does not regulate whether it's legal or illegal to sell

this particular microphone. It meets the series of individual industry standards, and in fact, our bias is quite the opposite. If the industry standards are too restrictive, the Government sues the industry standard setting group on antitrust violations.

In Europe, the standard setting tradition is much different. It's much more directed by the government. So therefore I think that on the one hand that's good, that if they need to harmonize or change their standards, the government perhaps has more direct control. But you can look at the negative side of it too, that it might be more difficult to move politicians and people who have various vested interests to protect in their own community.

As a side note, Mr. Chairman, I might say that on the testing, which is certainly related, that if there are standards, then you have to certify, as Mr. Vargo said in his statement, that your product meets the standard, whatever that may be, and that they're going to develop some sort of little code mark, that it meets it.

I am informed that several small- to medium-sized U.S. testing labs have recently been purchased by Europeans, an anticipation of marketing European certification services here in the United States. Now, whether that's good, bad, or indifferent for the testing industry, I'm not sure, but it certainly indicates that people in Europe are anticipating that the issue of testing will be a key issue as we get closer to this 1992 deadline. Mr. Chairman, I'll stop now. I appreciate your invitation, and will be happy to take any questions at any time.

[Mr. Swain's statement may be found in the appendix.]

Chairman LAFALCE. Thank you very much. Our next witness will be Stephen Cooney, the Director of International Investment and Finance, with the National Association of Manufacturers.

TESTIMONY OF STEPHEN COONEY, DIRECTOR, INTERNATIONAL INVESTMENT AND FINANCE, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. COONEY. Thank you very much, Mr. Chairman. I'm Stephen Cooney, director of international investment and finance for NAM. I'm very pleased to be invited to testify today regarding the EC program to complete the opening of its internal market by 1992, that we know in shorthand as EC–1992.

My comments are based on an intensive series of discussions with our member companies on this issue over the last year, and I would like to give you an oral summary of my testimony, and ask that the written statement be included in the record. I'd also like to provide for the committee, a complete report on the overall impact of EC–1992 on U.S. industry. A final version of that should be out before the end of the month for sure, so I'd like to provide that——

Chairman LAFALCE. The record will be kept open to include that.

[The report referred to by Mr. Cooney may be found in the appendix.]

Mr. COONEY. Thank you very much. What I'd like to do here is to focus on the issues that we feel would be the most critical for smaller U.S. enterprises. My major overall point is that U.S. companies almost uniformly emphasize that EC–1992 represents a

major market opportunity, but within the overall positive outlook, there are a series of major policy issues, the outcome of which could either enhance or reduce business opportunities for U.S.-based exporters or U.S. owned companies already established in the EC.

I am going to run briefly through some of the major aspects of the market opportunity which have been touched on by other witnesses here. First of course, Europe is our most important regional export market, and will probably remain so indefinitely. It takes about 25 percent of our total exports.

Second, as I indicated in written statement, it's a very critical market for many specific U.S. exports. For example, almost half of all U.S. computer products, over a third of our aircraft exports, are just two examples that I've noted.

Third, in accounting for the turnaround of the U.S. trade deficit, we absolutely must have an open and expanding EC market to be able to reduce our trade deficit. In the first half of 1988, out of a $30 billion total annual rate turnaround in our trade deficit, $12 billion of that came from the European Community.

Just one further comment here, responding to something Mr. Swain said, the importance of U.S. investment in Europe is that about 30 percent of our total exports to the EC go directly to U.S. affiliates in the EC. Now a lot of that is indirectly supplied by small business subcontractors in the United States. For example, on a Boeing aircraft.

Let's have a look at the overall internal market program. I won't go through that in detail. You have, as you said before, the man that wrote the book on that, Mr. Calingaert, in the previous panel.

Let me just say of the three kinds of barriers that we're looking at, physical barriers, fiscal barriers, and technical barriers, the most critical aspect from the point of view of U.S. manufacturers is the technical barriers. Such barriers prevent goods that are produced or traded in one EC member state from being sold in another. On the overall program, I just want to make three general points—three aspects that stand out from the point of view of U.S. business.

First of all, EC-1992 is not designed in itself to promote trade with non-EC partners. The former European Commissioner, Lord Cockfield, who is one of the chief architects of the program, at NAM 3 years ago said in a closed meeting with our members, "This program is not primarily for the benefit of our trading partners."

I should emphasize on the other hand, that every indication is—and they've made explicit commitments—that the EC will respect all existing international trade obligations.

The second point, and this is perhaps somewhat different to what you heard in the previous panel in the Q and A, EC-1992 is being implemented today. EC-1992, which includes a list of 300 directives and other policy actions is not like our recent FTA with Canada, that went into effect on a date certain, January 1, 1989. The EC-1992 program is going into effect continuously as directives and regulations are enacted.

As a result of that, the third point is that the economic impact may be front loaded. Companies in the EC have made, and are making decisions right now regarding cross border alliances and

rationalization of production. So that if you look at the impact on the market, the major positive benefit may be felt earlier than expected, and therefore U.S. business and the U.S. Government must be prepared to deal with the early impact of change.

On specific policies, NAM has a general watch list of issues, which has now expanded to a total of nine issues, and I'm going to focus principally on three of them that are of interest to small business. The nine issues that we have listed include technical standards, public procurement, and reciprocity. I will look at these in detail. We also have an interest in certain broad sectoral trade issues, rules of origin and local content, intellectual property, the social dimension of EC-1992, competition policy, and an area that the chairman just discussed in some detail and on which you have some views, monetary policy.

These are all very important issues, and I would be very happy to discuss these in more detail, but let me just look at the three that I mention that look like they have initial impact on small business.

Chairman LAFALCE. What are those three again?

Mr. COONEY. Technical standards first.

Chairman LAFALCE. Yes.

Mr. COONEY. Second, public procurement. Third, reciprocity.

Chairman LAFALCE. All right, fine.

Mr. COONEY. We looked first of all at the issue of technical standards. The principle of the new EC approach to standardization is that any product which can be sold in the member state in which it is produced will be freely marketable elsewhere in the EC, unimpeded by diverse national standards, or testing and certification procedures.

The emphasis in this approach is on mutual recognition and equivalence as opposed to the negotiation of detailed manufacturing and process standards. A new expedited EC standardization procedure based on EC framework directives, in keeping with this approach, was formally agreed in 1985. As Mr. Calingaert mentioned, the implementation of that is expedited also by the majority voting rules so that now no one country—nor even two big countries voting together—can block adoption of a directive.

The framework directives are relatively general, so the key question is how they are going to be translated into specific product standards, recognized and accepted across the EC. Now, this standardization process is not a governmental process. It's not being undertaken by the European Commission itself, or member state governments, but by the Europe-wide private standards bodies, known by their French acronyms CEN and CENELEC, for general manufactured goods and electrical manufactured goods. In principle, the adoption of common standards is widely seen by U.S. companies in Europe as a major benefit.

Those with production facilities in Europe can rationalize across national boundaries. As mentioned earlier, U.S. exporters, the usual role of small businesses here, can also be assured that if they make whatever changes they have to make to conform with a standard, that product should be—should, I emphasize that, should be available across the entire EC market.

However, there are two major causes for concern among U.S. companies. First, industries in some EC countries may push for harmonization up, as we call it, to a rigid and elaborate existing national standard. Such a development would disadvantage both producers in other EC countries and exports to the EC from non-EC sources.

I should add, in view of a comment that was made before, that in the environment and in certain othar areas, the Single European Act, in fact, mandates harmonization up. Article 100(a)(3) states, "the commission, in its proposals envisioned in paragraph (1) concerning health, safety, environmental protection, and consumer protection will take as a base, a high level of protection."

Second, proposed testing in laboratory certification rules could virtually eliminate self certification by manufacturers outside the EC, and make third party testing by non-EC laboratories virtually impossible. Existing draft proposals for a new EC system could lead to expensive modifications or costly time-consuming new testing practices for products that U.S. companies wish to ship to the EC.

Now the best remedy for this problem will probably be the access for U.S. companies to the CEN/CENELEC process. Smaller companies who are not producing in Europe are not allowed to participate directly in EC national standard bodies that cooperate in CEN/CENELEC.

For these companies it will be critical, I believe, to identify current or potential EC distributors who can serve as effective supporters of the U.S. companies' position. Those distributors, as Frank Vargo indicated earlier, are looking for U.S. partners, or U.S. product producers to fill out product lines.

The EC does require CEN/CENELEC to adopt existing ISO [International Standards Organization] standards, but for many products hardly any of these exist. There are very few in many industries. Also, the European Commission requires CEN/CENELEC to communicate any draft standards to ANSI, the American National Standards Institute, before they are adopted.

This is, basically, before the formal voting stage, and often too late for American companies to become involved. It is therefore very important that through U.S. Government channels, there should be a continuous dialogue between U.S. business and industry on both EC policies in general and specific proposals that appear to be developing as effective barriers to trade.

I would like to recall Mr. Sisisky's comment, and Mr. Bilbray's comments on the adequacy of the Commerce Department role here. In other contexts, this organization—NAM— has already testified in this Congress with regard to the fact that the United States has roughly the same number of foreign commercial service officers as South Korea, worldwide.

Quickly reviewing the other issues here, I would like to turn to public procurement. The European Commission's determination to open national government public sector procurement to intra-EC competition is another major feature of EC–1992. This process is to be completed in two steps.

First, there are existing directives, generally perceived as quite weak on public works and public supply, which are being strengthened. The bidding process in each EC member state must become

completely transparent. Second, and most controversially, the EC is attempting to expand its regime over public procurement to sectors currently excluded from both GATT and EC rules, telecommunication, water, energy, and transport.

The most important point for U.S. companies, is that the proposed new rules create no new rights of access for products made outside the EC. To determine whether a product is covered by these proposed new rules, the draft EC proposal suggests a 50 percent EC content rule.

In developing these rules, the EC has directly indicated that they're willing to consider rights of reciprocal access on a multilateral basis through negotiations under the GATT procurement code. That's not the Uruguay Round, that's the GATT procurement code. We can discuss the significance of this later if you want to go into the details here.

Finally, reciprocity. No issue has been of greater concern to the U.S. public regarding EC–1992 than the question of reciprocity, whether the EC is to construct a Fortress Europe, in which foreign access would be only granted on the basis of specifically negotiated bilateral reciprocal agreements.

In an important statement issued on October 19, 1988, the commission sought to define more clearly its position on the general question of reciprocity and related specific issues. The statement sought to reassure trading partners that, 1992 Europe will not be a Fortress Europe, but a partnership Europe.

I think this October statement has helped reassure U.S. companies operating in Europe that rights of existing investors, as traditionally interpreted under article 58 of the Treaty of Rome, are to be respected, but the statement is not a blanket endorsement of a national treatment principle, which means that treatment of foreign-owned enterprise will unconditionally be the same as domestically owned enterprises.

The commission has, in fact, said that it would be premature "to grant nonmember countries automatic and unilateral access to the benefits of the EC liberalization process before new international agreements on trade liberalization and open access exist."

In conclusion, I want to make one point that certainly has struck me on my recent trip to Europe, where I spent 3 weeks in a number of the countries, talking to people from EC governments, our companies over there, and the staff of the European Commission.

EC–1992 is not a monolith. There are many different national and commercial interests. There is an institutionalized conflict between the central organs of the community and specific member governments. So the story of this process is really in the details, and the ultimate question is how effectively both the U.S. private sector and the U.S. Government can track the detailed implementation of the program, and make our views and interests known in a timely and effective manner. Thank you.

[Mr. Cooney's statement may be found in the appendix.]

Chairman LAFALCE. Thank you very much, Mr. Cooney. Our next witness will be Mr. George DeBakey, representing ADAPSO.

TESTIMONY OF GEORGE DEBAKEY, EXECUTIVE DIRECTOR, ADAPSO

Mr. DEBAKEY. Thank you, Mr. Chairman. It is good to see you again.

I am pleased to be here representing ADAPSO, the largest association for the computer software and services industry. We represent micro, mini, and mainframe software companies, professional service companies, systems integrators, telecommunications service companies, data processing companies and valued added remarketers.

Approximately 80 percent of our 800 members are small businesses as defined by the Small Business Administration.

As for my own background, I spent 9 years in the private sector with a large U.S. multinational, lived 2 years in Europe and 4 years in the Middle East developing business and promoting U.S. exports. I had the opportunity in 1985 and 1986 to be Deputy Assistant Secretary to the Commerce Department responsible for high tech trade promotion and trade policy, representing 40 percent of U.S manufactured exports. I am involved in running the association for the computer software and services industry.

I think my own perspective is somewhat global in nature, as I have actually been both in the private sector and Government. I had the unique opportunity in 1973 to obtain an International Business Degree and an MBA before it was the in thing to do. I wish more people would.

I will read from my written comments and then I am going to divert and address some personal observations and comments which Congressman Sisisky mentioned, and I would also like to highlight some of his concerns.

According to the International Data Corp., U.S. independent software vendors accounted for $11.4 billion in revenue in 1988 worldwide. Nearly one third of this was in the small business area. We expect this to double by 1992 to nearly $7 billion.

Input, a California-based research firm, estimates that 19,600 of the 20,000 known software and service companies in the United States are considered small business. While at least 5,800 of these small businesses are independent software vendors, the majority are involved in professional services and processing services.

I might add, many of these companies did not exist 10 to 20 years ago in this industry and many of them, as I just indicated, are small business.

The U.S. software industry now accounts for 70 percent of the world market and we have a positive trade balance. Western Europe represents a very lucrative market for U.S. software suppliers.

In 1988, European users spent $10 billion on packaged software and $5 billion on custom software. We expect by 1993 that this will triple to over $40 billion in Europe alone.

When most software and service companies begin to export, by and large they start in the Western European markets. These markets seem to provide a certain level of comfort based on similarities in language, customs, and business practices.

Last September, our own organization sponsored an international marketing seminar designed specifically to assist those companies which had never exported or which had just begun to export. This seminar was our best seminar last year and more than 100 small companies attended here in Washington.

A number of directives, proposed directives and studies apply specifically to the computer software and service industry and I will highlight a few of these. Some of these come under the same categories that have been mentioned today. But I think it is important to reemphasize them.

In the computer and software industry, intellectual property content represents 100 percent of a product's value. The media on which it is transferred is incidental. The protection of that intellectual property therefore is vital. The commission issued a green paper on copyright and the protection of computer software. Our organization filed comments stating that the computer programs should be treated no differently than any other literary works.

Based on the responses to the green paper, the European Commission issued a draft directive at the end of December 1988 on the protection of computer software. While our organization is still reviewing the draft, all comments to date indicate that the directive will help provide very strong and comprehensive protection.

If this directive is adopted, software developers should receive improved protection in several EC countries particularly Italy and West Germany.

Piracy, the illegal copying of software, will still remain. However, this issue is being addressed on a bilateral basis.

I will not go into the details on the tax and tariffs. I have outlined those in my testimony, as well as concerns on regulations and standards and Government procurement.

It is probably safe to say, not only our own organization but many others, we probably still do not have a complete understanding of Europe 1992 and its impact. We have a number of activities this year in reviewing and commenting on EC-1992 through the Commerce Department, Small Business, and other organizations.

I would like to make the point, and this is where I will diverge. If we have a level playing field, let us assume, in Europe or anywhere in the world—that would be great. But then we still have to look at the fact that we still have to export our products. The same issues are going to affect small business then as they do today.

We recognize that we are going to one system in Europe, which will help, rather than maybe 12. But small business still faces requiring information, financing problems, education, knowing where to start.

I think it gets back to Congressman Sisisky's comments about the computer and activity. The technology now exists, Mr. Chairman. We have the resources available. I think we just have our priorities in the wrong place.

I am very concerned with the budget deficit and from my own experience working at the Commerce Department, I am concerned about resources being cut back in Commerce and possibly the Small Business Administration. I am a great supporter and a fanatic on export and international trade and I am a great supporter of Commerce and SBA. But if you were running a company in Buf-

falo and if things were getting tough would you cut your sales department?

I cannot imagine that we would want to cut off our international marketing department of the U.S. Government. I am very concerned that we need more resources. I know from practical experience. I had 40 percent of U.S. manufactured at Commerce Department for high tech, and I had the smallest staff. That makes absolutely no sense, Mr. Chairman.

If we are going to help American business, we have to put our resources in the right spot and that demands that we look at our own back yard. Even though we have a level playing field, I am concerned that we also have to look right here at home at how we tackle this problem. Trade promotion has to be a number one priority. Government policy and small business will be the major beneficiary of that, as long as we also have trade promotion as number one.

I would also say that we have lots of information available in the Government. I thought I knew a lot of it, but until I worked there I did not realize the good information and data available that many companies could have access to, and we need to market that better. I did that working through trade associations. I know that other people in the Government are doing that now.

I am also a great believer that trade missions and trade shows are very good for the small business. I personally took some missions to China. I know that we have some in Europe and other places. This is a good way that most small businesses can get more bang for their buck overseas, get introduced quickly to markets and the resources available to them. I compliment both the Commerce Department and SBA for the activities there.

SBA has also written jointly with AT&T books distributed on the small business resource guide and held many seminars. We are now working with SBA and AT&T on a similar book dedicated to exporting for software companies only.

In the past year I served on Secretary Verity and President Reagan's export, now advisory committee, to raise the visibility of exporting to small- and medium-sized companies. I was encouraged by this effort and I would encourage you to get a copy of our report which was submitted to the President last month before he left office. It shows that if we put exporting as a top priority it can have a tremendous impact if we take this seriously.

Most companies that have computers in their offices today, small firms, cannot come to Washington and walk around the halls of every department. But we could plug them in to a computer data base and deliver information. They could sit in their office, tap into the information, and then decide where to go from there. You have to go to your local bank. You have to go to an export trading company. Whatever it is.

But that information is critical. Today at 2 o'clock I am going to the Organization of American States to look at a demonstration of their new computer. I am also working with the District of Columbia which is looking at this International Trade and Cultural Center which is going to go up in the parking lot across from the Commerce Department. They are going to look at a major comput-

erization one stop shop which will help American companies find out how to get access to information.

Mr. Chairman, the only other comment I will make is on a personal note, from my own background. I am a great believer that this country has to become more educated internationally. More universities are offering MBA programs with requirements in international trade and activities such as this. Associations and the Government are doing things. I think the one hope this country has in the long run is to create a generation of more internationally oriented people that speak many languages. Thank you very much.

[Mr. DeBakey's statement may be found in the appendix.]

Chairman LAFALCE. Thank you very much, Mr. DeBakey. Give my best to all my friends within ADAPSO.

Mr. DEBAKEY. Thank you.

Chairman LAFALCE. Our next witness will be Dr. Franklin Burroughs. However, I regret to say that I unfortunately have another time commitment that I must meet and I am going to ask Mr. Sisisky if he would chair the balance of this hearing.

TESTIMONY OF FRANKLIN T. BURROUGHS, PRESIDENT, ARMSTRONG COLLEGE, BERKELEY, CA

Mr. BURROUGHS. Mr. Chairman, I would like to thank the committee and the Department of Commerce for being in the forefront of this developing issue on the opportunities for small business in the new internal market that will be created in Europe in 1992.

The Department of Commerce has invited me to research this issue in preparation for the first international trade event they have ever sponsored exclusively for small business, which is called Export '89.

I am happy to present some preliminary conclusions and observations today. I will begin reading from about page 3 of the written statement.

At present, the community presents a number of barriers to trade. On such products as craft paper and paperboard, the community imposes duties ranging from 6 to 9 percent even though the U.S. assesses no duties. The community definition of the products exacerbates the problem.

While the United States allows softwood plywood to enter the country duty free, the community charges 10 percent ad valorem on the same product. Some 650,000 cubit meters can be imported into the community without duty under the quota system.

Other U.S products on which high tariffs are levied when entering the community include cigarettes, smoking tobacco, cigars, gas-powered trucks, tufted carpets, dumpers, aluminum products, semiconductors, pollack, halibut, and salmon.

Recently the community increased its tariffs on such high technology products as digital audio discs and personal video cassette recorders.

The procedures for the adoption of harmonized standards for telecommunications equipment followed by the community directs community members to accept data from other member nations developed in accordance with a common set of European standards.

Standards strictly applicable to European goods can practically preclude U.S. products from the European market.

As of January 1, 1988, in accordance with the Third Country Meat Directive, meat cannot be imported into the European Community from a third country unless community veterinarians have inspected and certified slaughtering and packaging plants in the particular country. Relatively few U.S. plants have been approved.

A recent community ban on the use of both natural and synthetic hormones in livestock production threatens effectively to eliminate the importation of meat and meat products from the United States into the community.

Strong buy national policies tend to influence negatively such industry sectors as telecommunications equipment, large electrical equipment, and transportation-related items. Such policies limit the sales opportunities open to U.S. firms in the community

The community grants export subsidies or restitutions to its exporters on a wide range of agricultural products. These restitutions usually represent the difference between the community internal price and the lowest price competing exporters offer.

The subsidies exert downward pressure on world agricultural prices and reduce the rate of return for all agricultural producers.

The tied-aid credits in which developing countries are afforded a package of aid and conventional export credits linked to donor nation purchases are sometimes used to the detriment of third-country competitors. The use of favorable concessional aid terms can produce export sales by such nations as the United States.

Progress toward the harmonization of community members' intellectual property laws has been slow, and national differences among the members' laws often create confusion and delay for U.S. companies. Legal complications may worsen the situation.

As a result of EC–1992, one of the major impediments to U.S. exports to the European Community, especially for small- and medium-sized firms, may be bureaucracy bred by complexity. Rather than dealing with the employees and institutions of an individual government, a firm seeking to do business with the community will need to find its way through the maze of bureaucrats and institutions established to protect the objectives and regulations of some 12 countries.

The Single European Act adopted by EC governments in 1985 should increase the powers of community institutions. In accordance with the act, the Council of Ministers will, for example, be able to determine that particular provisions in force in one of the member states must be recognized as being equivalent to provisions applied by another member. The result may be competitive legislation among member states. An American company attempting to trade with or conduct business in the community could unwittingly become enmeshed in the legislative confusion.

EC–1992 is in reality a massive experiment in deregulation. Banks in one member nation will be able to operate in other member countries. Insurance can be marketed throughout the community. Many goods and services should be able to move across borders without hindrance. But the short-term effects may resemble those resulting from America's recent moves toward deregulation. Extreme price fluctuation, feverish competition, and brutal

battles for survival remain distinct possibilities. Already at a potential disadvantage, small- and medium-sized firms could find themselves among the pack rather than in the lead in marketing their products.

A nationalism-internationalism conflict may become an unwanted byproduct of EC-1992. Various member states view the community concept differently. Some consider it only an economic union which does not encompass the unrestricted movement of people across borders. Multinational cooperation on such issues as gun control, border defense, and immigration may prove sticky. National customs, posts and tax remain particularly important areas of potential disagreement. The possibly disruptive and complicated national concerns as regards borders are legion——

Mr. SISISKY [presiding]. Excuse me, Dr. Burroughs.

Mr. BURROUGHS. Please.

Mr. SISISKY. Just one moment. I understand, Mr. Cooney, that you had a meeting at 11:30. Please, you may be excused.

Mr. COONEY. Thank you. It is with the USTR on this issue.

Mr. SISISKY. You had advised the committee staff and we do appreciate it.

Mr. COONEY. Thank you very much.

Mr. SISISKY. So you will not get too nervous, go ahead, continue, Dr. Burroughs.

Mr. BURROUGHS. The possibly disruptive and complicated national concerns as regards borders are legion and can embroil American firms in unwanted controversy. The conflict could complicate the formation of joint ventures. The concept of antitrust may assume a new meaning. The possible effects on mergers, acquisitions, and direct foreign investment in the European Community have not yet been fully determined.

The demolition of barriers to trade with the community might prove difficult for EC-1992. The potential for success lies squarely in the willingness of the member countries to cooperate. Ultimately, changes in national attitudes will prove more significant to the removal or retention of restrictions to entry into the business of community states than will mere changes in rules.

Unlike the United States, Europe will probably remain a series of national markets that gradually become more accessible. Different languages will persist. The absolute freedom to live and work in any member state will remain in question. Customs controls at national frontiers are possible while multinational television networks carrying advertising readily across borders seem unlikely. Transaction costs and exchange rate uncertainty inherent in sales and subcontracting will persist. A set of Euro rules will probably not exist. Mutual recognition of rules between and among member states may reduce barriers and make market entry easier. But business people will need to discover for themselves what will be possible.

Noncommunity related barriers may also continue to restrict the success of U.S. small business in the community. To illustrate, rather than accumulating resources in-house which permit firms to use successfully environmental opportunities and readily face threats, U.S. business entities first undertake detailed analyses of

the environment and then attempt to suit the in-house resources to situations.

Firms in the United States or associated with American business are often viewed as a number of strategic business units, and resources are deployed in such a way as to ensure a portfolio balance among the various units. Resource development decisions most often reflect the preferences of top management and their push for profit. The decisions indicate a triumph of logic and impersonality over involvement.

U.S. businesses tend to emphasize financial over human resources, the objective being the maximization of profit. When firms determine that a particular project may not contribute to corporate growth through earnings, they may abandon the project abruptly. Decisions to withdraw in an effort to minimize near-term losses and protect financial resources are lauded as evidence of a determination to bite the bullet. Long-term potential may be sacrificed to short-term expediency.

A strategic alliance between United States' business and the Government of the United States is seldom evident in the conduct of international commerce. U.S. embassies may serve as repositories of information, but hardly ever do they actively support specific American firms seeking contracts or product distribution. This lack of support at times puts U.S. companies at a distinct disadvantage when competing with their European counterparts which enjoy a continuing alliance with their governments and their governments' active support.

Finally, one of the most serious of the noncommunity related barriers to U.S. exports is the decline in U.S. international business expertise.

The influence of barriers to U.S. trade with the community can, however, be greatly reduced, if not eliminated, through awareness, concerned effort, strategic planning and definite communication.

Knowledge serves as the key to awareness, and information remains necessary to knowledge. American business people must continually seek information about the detailed changes in the European business environment as well as the latest developments in EC–1992.

Small- and medium-sized firms may export indirectly and may have no special in-house activity for export purposes. In such instances, the firms may wish to use international trading companies, export management companies or similar organizations. In order to serve these clients better, it would seem appropriate for the trading and export management firms to maintain and staff information centers which they could make available to other clients and potential clients on request and at minimum cost.

The Government of the United States must continue its attempt to find solutions to trade situations it considers disadvantageous to U.S. exporters to the European Community through bilateral and multilateral negotiations. Certainly, multilateral discussions conducted within the framework of the General Agreement on Tariffs and Trade must be continued.

If possible, the U.S. Government should enable American business people to become involved in the development of the industri-

al norms that will shape their respective products in the European market.

Small- and medium-sized U.S. companies must make sure that the international trading firms, export management firms, and other groups they associate themselves with are properly structured to fulfill their marketing requirement within the community.

A stronger strategic alliance must be established between the Government of the United States and U.S. business. No longer can each entity view the other as at worst an adversary and at best a nuisance. Each has an important role to play in international commerce, and regaining competitiveness requires that the roles be played in a mutually beneficial manner.

Most important, small-, medium-sized, and even large U.S. firms must improve their international business expertise through whatever means they deem appropriate and cost effective. Without such expertise, no amount of Government-business cooperation, Government negotiations, or information bank development will be useful or helpful. Without such expertise, U.S. business will not remain as competitive as it is now. Thank you.

[Mr. Burroughs' statement may be found in the appendix.]

Mr. SISISKY. Thank you very much. Thank all three of you gentlemen. Those who have testified, particularly Frank Swain, know that as the hour closes onto lunchtime, most members disappear. I apologize for that. It is not that they are disappearing because of their lack of interest. It is that they have commitments at noon. One gentleman just told me that he had a State delegation luncheon, so I do apologize for the committee. However, they will have this to read.

Because, particularly, two or three of you gentlemen referred to what I had said, and I will start with you, Frank I appreciate your report. I think it is the Jack Faucett——

Mr. SWAIN. That is right.

Mr. SISISKY [continuing]. It still does not do what I want. At least it gets an idea and it grabs a hold. I am very interested. When I was in a small business, I knew what every customer bought and I could discern very easily if I had a drop in one or an increase and to find out why. That is the information that I wanted. If you could find out, by legislation, or anything, that we could—somebody has got to file something when they export. That is what I do not understand. We could still keep the confidentiality. I am interested in what we are exporting, what and where. That is what this does not answer.

Mr. SWAIN. That is right. We could, if you are interested, we could go back and ask our contractor to look at types of products. I think that there is some information on that.

Mr. SISISKY. He does have types of products in there.

Mr. SWAIN. He does have, because we looked at the PIERS, which is a private data base. Of course as Mr. Vargo pointed out, the Commerce Department, one part of the Commerce Department knows exactly what everybody exports. Another part of the Commerce Department knows exactly how large and small people are. It is getting those two together. I will reiterate one big problem that we had, and I think Commerce will have the same problem, is that a lot of exports are through brokers. The size of the broker is

irrelevant because a lot of brokers are small, they have a dozen or so people, but they may be handling products for large companies or small companies. So it is going to be very important to crack that issue as well.

Mr. SISISKY. Mr. DeBakey really hit the point that I wanted, when I asked Mr. Vargo how many people did he have working for him. I think that basically told it all. In this country, as large as we are and what we export and import, to have such a small staff is unbelievable. I agree with you. You do not cut down on your sales staff when things get bad, you increase it. Trade promotion should be a key. There is no question about that. How we get this administration to use that, or how we fold it in the budget, I do not know, but I would be glad to accept any ideas that anybody has. I will be chairing the Subcommittee on Export and I really want to do something, not just have hearings and just let it pass.

I do not care who it is, and Frank knows, that comes up here from the Commerce Department. I was hoping the new Secretary would be here today. I am going to keep at them on just that because that is where it has to come.

Mr. DEBAKEY. Well, Congressman, I agree with you. Like I mentioned earlier, I am a supporter of the efforts by Commerce and SBA and others. I think the issue that concerns me, and Frank Vargo has done an excellent job. He works in the area of analysis with countries and has the EEC as his responsibility. The area I was involved in, Congressman, was trade development, another part of commerce which was divided by sectors and we interacted with those groups.

I think what I am concerned about is that those groups, you know, USTR has a lean staff and I know from my own experience, my staff supported them on many of these high tech issues, the semiconductor trade agreement with Japan, the list goes on and on. I guess the point I am making is these industries need good analysis, need good trade promotion in the Government and I am very nervous about the support that could be cut back. It seems hard to believe that when we are in this world trade environment that that is what we might end up doing. The technology is there. What I also think needs to be done, and this is going to sound self serving, my industries are what you would call today the information technology industries. They are the companies that could come in and put this system together. I think the Government lacks technical expertise. We are concerned that there is going to be a shortage of computer programmers in this country in the next couple years, couple hundred thousand. The U.S. Government is going to be competing for the same people that our companies are competing to hire and that is going to be a serious problem.

So I think one of the things you ought to consider is you have to think about hiring, subcontracting, experts to come in to pull these systems together. We have the technology. There is no reason we cannot do it.

Mr. SISISKY. I agree with you. Let me ask, while you are here, I was going to ask the other panel this question but I think, you know, it has been stated that the EC–1992 plan, will be a definite advantage for those businesses that have a presence or have invest-

ed in Europe before 1992. Do you think this is an accurate statement?

In other words, should they have a presence in Europe before 1992?

Mr. DEBAKEY. I would guess that that is probably going to be helpful. I would question how many small businesses can do that, even whether it's 1992 or whether it was 1960.

I mean, they do not have the resources and capability. I think what they have to do is understand if they are doing business in Europe now through a representative or a distributor, or if they are not, they need to find out how can I find somebody to represent me, will I be locked out of the market if I do not have a representative, or if I have one there, is the game changing that I need to change my strategy?

But I am concerned that I do not see how small businesses——

Mr. SISISKY. That was my next set of questions, if you answered yes. A lot of articles that I have read make that statement. That is where I picked it out. What will happen with someone in a position that has a good product, has been successfully exporting to Europe, but is not financially capable of setting up a European presence? What are his options?

Mr. BURROUGHS. Mr. Chairman, I think one of the things we tend to overlook, in the unification or supposed unification for 1992, we still have a series of cultures that we are dealing with, and when you are dealing with marketing, and you are dealing with small business, you have to deal with those cultures even though the regulations may be somewhat unified. You are going to have difficulty in the various markets represented by the national interests. I think that is something even a large company is going to have to look at, but it is going to be much more difficult for a small company.

Mr. SISISKY. Of course, obviously it is easier for a multinational company because they are already there but therein lies a problem, too. If we do indeed have to have a presence, and that could be manufacturing, then we are going to lose jobs in the United States. Of course, if the dollar holds like it is, it's a lot cheaper to produce over here than it would be over there.

There is no one here, and the lateness of the hour. I do have a whole bunch of questions. But I do appreciate all of you being here. The meeting will stand adjourned.

[Whereupon, at 12:18 p.m., the committee adjourned, subject to the call of the Chair.]

APPENDIX

STATEMENT OF REP. JOHN J. LaFALCE, CHAIRMAN
COMMITTEE ON SMALL BUSINESS

HEARING ON "IMPLICATIONS OF THE EC-1992 PLAN
FOR AMERICAN TRADE, COMPETITIVENESS AND SMALL BUSINESS"
February 9, 1989

One of the major trade issues currently facing the United States is the European Community's plan to create a single internal market by 1992. Once established, this plan would provide for the free movement of goods, services, people and capital to a $4 trillion market of 320 million people.

The impact of "EC 1992" upon international trade and financial flows as well as ongoing GATT negotiations depends on whether economic unification will lead to an increase in free trade or to an increase in European protectionism. Today's hearing will focus on the implications of this plan for American trade and competitiveness with a particular emphasis on American small business.

In general, I believe it is in our best interests to encourage the move toward a more integrated European market, particularly if it leads to arrangements comparable to those developed in the recent American-Canadian Free Trade Agreement. First, our stake in the European Community is substantial--accounting for $160 billion in exports and imports in 1987. In addition, if the establishment of a unified market opens up new American business and export opportunities, this could help to further reduce the United States' trade deficit. Over the past year, the American trade deficit with the European Community has decreased from $25 billion to $12 billion. This 50% reduction was based primarily on a double-digit increase in American exports to Europe. Since 24% of our total exports go to Europe, this market is second only to Canada in terms of its overall importance for American exports.

While I am generally supportive of the 1992 movement, I am nevertheless concerned about whether the establishment of European Community-wide regulations could potentially hinder the ability of American business to have fair market access to Europe post-1992. Members of the European Community currently rely on both tariff and non-tariff barriers to protect their domestic industries. Internal trade barriers will disappear after 1992, but it is not at all clear that external trade barriers will. For example, with regard to tariff barriers, countries such as Italy, France and Spain maintain significant import restrictions on products such as textiles and automobiles. It is not yet decided if these quantitative restrictions will be completely eliminated or if they will become Community-wide restrictions in 1992.

Non-tariff barriers may also be applied to the entire Community which would make it more difficult for American companies to do business there. Greater trade discrimination

could occur, for example, through the establishment of reciprocity requirements, tougher local content regulations, the maintenance of subsidies, discriminatory public procurement practices, and limited access to research and development programs.

For American small business, several of the recently enacted or proposed directives on standardization, certification and testing could bring mixed results. On the one hand, development of European-wide standards would make it easier for small business to develop and market its products. On the other hand, new requirements that products be tested and certified on EC soil may make it more expensive for small firms to compete and sell its products there.

Many of these proposed directives are still subject to ongoing negotiations within the Community. I am concerned, therefore, whether the Federal Government is doing all that it can to work with the European Community and Member Governments to ensure continued market access for American business. It is imperative that the Administration develop a coherent and consistent foreign economic policy toward "EC 1992." The Administration needs to speak with one voice on this subject so that there will be no doubt that the United States expects to maintain and strengthen our vital relationship with the Community through the establishment of freer and fairer trade.

Due to the importance and timeliness of this hearing, we have two panels today who can speak with much authority on this important issue. The first panel will focus on the impact of the 1992 plan on American foreign economic policy, trade and competitiveness. Frank Vargo, Deputy Assistant Secretary, Department of Commerce, will discuss the Administration's policy and efforts; Michael Calingaert, Senior Fellow, National Planning Association, will examine the current progress and problems within the European Community to fully establish the Internal Market Plan by 1992; and Dr. Joan Spero, Senior Vice-President, American Express Company, will look at the proposed impact of the 1992 Plan on American financial and service sectors.

The second panel will examine the implications of the 1992 Plan for small business. Frank Swain, Chief Counsel, Office of Advocacy, Small Business Administration, will present the results from a recently completed study on "Small Business Exports of Manufactured Products." Stephen Cooney, Director, International Affairs and Finance, National Association of Manufacturers, will look at the implications for small American manufacturers; and George DeBakey, Executive Director of ADAPSO, will discuss the implications for small computer software and telecommunications firms. Dr. Frank Burroughs, President, Armstrong College, Berkeley, California, will present his findings from an ongoing study on the impact of EC-1992 on small business, with a particular focus on current European trade barriers for American small business.

FEBRUARY 9, 1989

CONGRESSMAN NORMAN SISISKY
STATEMENT FOR HEARING OF THE FULL COMMITTEE ON
"IMPLICATIONS OF THE EC 1992 PLAN FOR AMERICAN TRADE AND COMPETITIVENESS"

GOOD MORNING. I WOULD FIRST LIKE TO TAKE THIS OPPORTUNITY TO THANK THE CHAIRMAN, MR. LAFALCE, FOR HOLDING THIS HEARING, SO QUICKLY AT THE BEGINNING OF THIS CONGRESS, ON THE IMPLICATIONS OF THE EC 1992 PLAN FOR AMERICAN TRADE AND COMPETITIVENESS.

THE EC 1992 PLAN IS SUCH AN IMPORTANT ISSUE AND SUCH A COMPLEX ISSUE THAT WE MUST BEGIN A DISCUSSION NOW. BEFORE WE KNOW IT, 1992 WILL BE UPON US AND U.S. SMALL BUSINESSES SHOULD BE PREPARED FOR ANY CONSEQUENCES THAT COULD OCCUR AS A RESULT OF THIS PLAN.

LAST YEAR, I CHAIRED A SUBCOMMITTEE HEARING ON THE OBSTACLES THAT SOME U.S. SMALL BUSINESSES ARE HAVING IN EXPORTING. IT WAS STATED AT THAT HEARING THAT THE U.S. IS IN THE MIDST OF AN "EXPORT BOOM". HOWEVER, IT HAS ALSO BEEN STATED THAT THE EC 1992 PLAN COULD HURT THIS EXPORT BOOM IF U.S. BUSINESSES "HAVE TO SET UP SHOP IN EUROPE TO HANG ONTO THEIR MARKETS".

IN THE COMING MONTHS, THE SUBCOMMITTEE ON EXPORTS, OF WHICH I AM CHAIRMAN, WILL CONTINUE TO FURTHER EXPLORE THIS ISSUE AS IT AFFECTS U.S. SMALL BUSINESS EXPORTERS. I INTEND TO WORK VERY CLOSELY WITH THE CHAIRMAN AND THE OTHER MEMBERS OF THIS COMMITTEE.

AGAIN, I CONGRATULATE THE CHAIRMAN FOR HOLDING THIS HEARING, AND I KNOW THAT FROM THE DISTINGUISHED WITNESSES THAT WERE SELECTED TO TESTIFY TODAY, THIS HEARING WILL BE VERY INFORMATIVE. THANK YOU.

STATEMENT OF
FRANKLIN J. VARGO
DEPUTY ASSISTANT SECRETARY FOR EUROPE
U.S. DEPARTMENT OF COMMERCE

BEFORE THE
HOUSE SMALL BUSINESS COMMITTEE

FEBRUARY 9, 1989

MR. CHAIRMAN, I AM PLEASED TO BE HERE TODAY TO DISCUSS THE EUROPEAN COMMUNITY'S PLAN TO COMPLETE THE INTERNAL MARKET BY 1992, AND TO CONSIDER THE IMPLICATIONS FOR U.S. TRADE AND COMPETITIVENESS. IN MY REMARKS TODAY, I WILL BE PLACING PARTICULAR EMPHASIS ON THE IMPLICATIONS FOR U.S. SMALL BUSINESS.

THE EUROPEAN COMMUNITY'S PROGRAM TO CREATE A SINGLE MARKET BY 1992 IS ONE OF THE MOST IMPORTANT EVENTS FACING AMERICAN COMPANIES. BY 1992, THE EUROPEAN COMMUNITY EXPECTS TO REMOVE BARRIERS TO THE FREE MOVEMENT OF GOODS, PEOPLE, AND SERVICES, FORMING A SINGLE CONTINENTAL-SCALE MARKET OF 320 MILLION PEOPLE, A MARKET FOR OVER $4 TRILLION OF GOODS AND SERVICES ANNUALLY.

THE EC MARKET

LET ME FIRST PUT THE 12-NATION EUROPEAN COMMUNITY (THE EC) IN PERSPECTIVE. IT IS CURRENTLY THE MOST IMPORTANT MARKET AND BUSINESS PARTNER FOR AMERICAN COMPANIES, LARGE AND SMALL. IN 1988 U.S. MERCHANDISE EXPORTS TO THE EC WERE $75 BILLION -- MAKING THE EC OUR LARGEST EXPORT MARKET.

MOREOVER, THE SALES OF U.S. AFFILIATES IN THE EC LAST YEAR WERE $550 BILLION. THUS, THE EXPORTS AND AFFILIATE SALES OF U.S. COMPANIES IN THE EC LAST YEAR WERE OVER $600 BILLION. THIS IS THREE TIMES THE AMOUNT OF U.S. EXPORTS AND SALES IN CANADA, AND FOUR TIMES AS MUCH AS IN JAPAN. IT IS NO WONDER THAT AMERICAN COMPANIES ARE SO CONCERNED ABOUT WHAT HAPPENS IN THE EC.

LAST YEAR AMERICAN EXPORTS TO THE EC ROSE OVER 25%, WHILE OUR IMPORTS FROM THE EC WERE UP ONLY 5%. AS A RESULT, OUR TRADE DEFICIT WITH THE EC WAS CUT IN HALF. IN 1987 IT WAS $24 BILLION, BUT IN 1988 IT FELL TO $13 BILLION.

IN THIS REGARD, MR. CHAIRMAN, IT MAY BE INTERESTING TO NOTE THAT SINCE THE CREATION OF THE EC IN 1958 THE SUM OF OUR ANNUAL TRADE BALANCES HAS CUMULATED TO A TRADE SURPLUS OF ABOUT $20 BILLION. JUST FOR COMPARISON, DURING THE SAME TIME PERIOD, OUR TRADE DEFICITS WITH JAPAN CUMULATED TO A TOTAL DEFICIT OF OVER $300 BILLION.

WHILE MANY U.S. EXPORTS AND CORPORATE SALES IN THE EC ARE FROM LARGE U.S. CORPORATIONS, THE EC IS A TREMENDOUSLY IMPORTANT MARKET FOR SMALLER FIRMS -- NOT JUST FOR EXPORTS, BUT FOR JOINT VENTURES, LICENSING, AND AFFILIATE SALES AS WELL.

THE EC'S 1992 PROGRAM

NOW, MR. CHAIRMAN, I WOULD LIKE TO TURN TO THE EC'S 1992 PROGRAM, AND TO REVIEW BRIEFLY JUST WHAT THAT PROGRAM IS ALL ABOUT.

WHEN THE EC WAS CREATED IN 1958, THE FOUNDING NATIONS SET ABOUT TO CREATE A SINGLE, COMMON MARKET IN EUROPE THAT WOULD GIVE THEIR COMPANIES ONE LARGE MARKET TO SERVE AS A BASIS FOR BUILDING UP INDUSTRIES THAT COULD COMPETE WITH THE REST OF THE WORLD.

THEY WEREN'T ABLE TO CREATE THAT COMMON MARKET THEN. THEY DID ELIMINATE INTERNAL TARIFFS, BUT THEY WERE UNABLE TO OVERCOME INTERNAL PROTECTIONISM AND FEAR OF COMPETITION WELL ENOUGH TO GET RID OF PROTECTIVE NATIONAL GOVERNMENT PROCUREMENT RULES, PROTECTIVE INDUSTRIAL STANDARDS, LICENSING REQUIREMENTS, AND A HOST OF OTHER NON-TARIFF BARRIERS.

A SINGLE EUROPEAN MARKET NEVER EMERGED, AND WE CONTINUED TO SEE THE MARKETS OF EUROPEAN MEMBER STATES INSTEAD.

THAT IS WHAT THE 1992 PROGRAM IS ABOUT. THE EUROPEANS ARE AT LAST TRYING TO ELIMINATE ALL THOSE INTERNAL NON-TARIFF BARRIERS TO THE MOVEMENT OF GOODS, PEOPLE, CAPITAL, AND SERVICES THAT WILL CREATE ONE SINGLE MARKET IN EUROPE.

EUROPE BADLY NEEDS TO SUCCEED. THEIR ECONOMIC GROWTH HAS BEEN SLOWING FOR A DECADE AND A HALF, AND REAL GNP GROWTH HAS AVERAGED ONLY 1.7% PER YEAR SINCE 1980. ESSENTIALLY NO NEW NET JOBS HAVE BEEN CREATED IN THE EC SINCE 1980. IN THE UNITED STATES THE FIGURE IS ABOUT 18 MILLION NEW JOBS.

EUROPEAN COMPANIES HAVE BEEN FALLING BEHIND IN RESEARCH AND DEVELOPMENT, IN INNOVATION, AND IN COMPETITIVENESS. THAT IS WHY THE PRESSURE TO COMPLETE THE SINGLE EUROPEAN MARKET HAS BEEN COMING FROM EUROPEAN INDUSTRY. THEY ARE TRYING TO CREATE A SINGLE MARKET WITHOUT INTERNAL BORDERS THAT WILL ALLOW BUSINESS TO BECOME MORE COMPETITIVE.

UNDER THE LEADERSHIP OF THEN EC COMMISSIONER FOR THE INTERNAL MARKET, LORD COCKFIELD, THE EC COMMISSION IDENTIFIED A PROGRAM OF 300 DIRECTIVES -- REGULATIONS -- THAT WOULD REMOVE THE BARRIERS AND ALLOW THE FREE MOVEMENT OF ECONOMIC RESOURCES AND PRODUCTION. ABOUT ONE-THIRD OF THESE DIRECTIVES HAVE NOW BEEN IMPLEMENTED, ANOTHER HALF HAVE BEEN IMPLEMENTED OR INTRODUCED FOR DISCUSSION, AND ONE SIXTH ARE STILL BEING DRAFTED. FULLY 90 PERCENT OF THE DIRECTIVES AFFECTING INDUSTRIAL GOODS HAVE BEEN INTRODUCED.

EVERY AREA OF COMMERCE IS AFFECTED, AND THE COMPETITIVE ENVIRONMENT WILL BE FUNDAMENTALLY AFFECTED. CLOSED MARKETS WILL BE OPENED, AND PRODUCTS AND SERVICES WILL BE FREE TO BE SOLD THROUGHOUT THE COMMUNITY. OPPORTUNITIES FOR SALES WILL GROW, BUT SO WILL THE COMPETITION. STRONGER AND MORE INNOVATIVE EUROPEAN FIRMS WILL RESULT AND WILL CHALLENGE AMERICAN AND OTHER FIRMS NOT JUST IN EUROPE, BUT WORLDWIDE. THERE WILL ALSO BE RISKS FOR U.S. COMPANIES, AS I WILL DISCUSS LATER ON.

EFFECT ON U.S. COMPANIES

THE SUCCESSFUL COMPLETION OF THE EC'S 1992 PROGRAM WILL BE STRONGLY IN OUR NATIONAL INTEREST AND IN THE COMMERCIAL INTEREST OF U.S. COMPANIES -- BOTH LARGE AND SMALL -- IF, AND I STRESS IF, IT IS IMPLEMENTED IN A WAY THAT KEEPS THE MARKET OPEN TO INTERNATIONAL TRADE AND INVESTMENT.

THE EC 1992 PROGRAM CARRIES THE POTENTIAL TO BE A MORE ATTRACTIVE MARKET TO U.S. EXPORTERS, FOR U.S. COMPANY PRODUCTION COSTS WOULD FALL AS FEWER PRODUCT VARIATIONS NEED TO BE PRODUCED AND AS MARKETING AND DISTRIBUTION COSTS WOULD FALL.

MANY AMERICAN COMPANIES WOULD FIND THE EUROPEAN COMMUNITY AN ATTRACTIVE MARKET FOR THE FIRST TIME, ONCE THEY FIND THEY CAN SELL A PRODUCT MADE TO ONE SET OF SPECIFICATIONS THROUGHOUT THE $4 TRILLION EC MARKET INSTEAD OF HAVING TO MODIFY PRODUCTS FOR 12 SMALLER MARKETS.

THE DEPARTMENT OF COMMERCE HAS UNDERTAKEN AN EXTENSIVE PROGRAM REVIEWING THE EC'S 1992 DIRECTIVES WITH U.S. INDUSTRY. WE HAVE BEEN WORKING WITH 100 INDUSTRY TRADE ASSOCIATIONS, AND HAVE BEEN CONTACTED BY CLOSE TO 6000 INDIVIDUAL FIRMS.

BASED ON OUR ANALYSIS AND DISCUSSIONS WITH FIRMS, WE BELIEVE THAT ON BALANCE THE 1992 PROGRAM SHOULD BENEFIT U.S. COMPANIES DOING BUSINESS IN EUROPE. THIS INCLUDES COMPANIES EXPORTING TO EUROPE AND THOSE PRODUCING IN EUROPE. AND IT INCLUDES SMALL COMPANIES AS WELL AS LARGE. BUT BOTH INDUSTRY AND GOVERNMENT NEED TO WORK TOGETHER TO ASSURE THAT U.S. COMPANIES OBTAIN THE BENEFITS OF THIS NEW LARGER MARKET.

POSITIVE BENEFITS

THERE WILL BE MANY POSITIVE BENEFITS IF THE EC IMPLEMENTS THE PROGRAM IN AN OPEN MANNER. FIRST, THE EUROPEAN COMMUNITY SHOULD EXPERIENCE FASTER ECONOMIC GROWTH -- WHICH WILL INCREASE THE DEMAND FOR U.S. PRODUCTS IN THE EC. SECOND, IT WILL BE AN EASIER AND MORE ATTRACTIVE MARKET IN WHICH TO SELL. PROCEDURES AND STANDARDS WILL BE MORE UNIFORM, REDUCING MANY OF THE COSTS AND DIFFICULTIES THAT HAVE CHARACTERIZED EXPORTING TO THE EC COUNTRIES.

ONE OF THE HELPFUL ACHIEVEMENTS TO DATE, FOR EXAMPLE, HAS BEEN THE IMPLEMENTATION OF "THE SINGLE ADMINISTRATIVE DOCUMENT" -- A SINGLE CUSTOMS DOCUMENT THAT HAS REPLACED UP TO 150 DOCUMENTS FOR SOME EXPORT SHIPMENTS IN EUROPE, AND HAS GREATLY REDUCED THE COST AND ADMINISTRATIVE BURDEN OF SHIPPING GOODS THROUGHOUT THE EC. THIS IS OF PARTICULAR BENEFIT TO SMALLER COMPANIES.

ANOTHER HELPFUL DEVELOPMENT IS THE EFFORT TO ELIMINATE STANDARDS AS AN INTERNAL TRADE BARRIER. THIS IS OF PARTICULAR INTEREST TO SMALLER U.S. COMPANIES UNABLE OR UNWILLING TO MAKE UP TO 12 VARIANTS OF ONE PRODUCT TO MEET THE STANDARDS REQUIREMENTS OF THE 12 MARKETS COMPRISING THE EC. MANY SMALLER U.S. COMPANIES EXPORT TO ONLY ONE OR TWO OF THE LARGEST EC MARKETS, AND THE COST OF MEETING DIFFERENT STANDARDS HAS BEEN ONE OF THE REASONS WHY THEY HAVE NOT ATTEMPTED TO SELL MORE BROADLY IN THE EC.

ONE OF THE QUESTIONS WE IN THE COMMERCE DEPARTMENT GET FROM SMALLER U.S. FIRMS IS, "WILL I HAVE TO INVEST IN THE EC TO KEEP SELLING THERE?" THE ANSWER TO THAT IS "NO". TARIFFS ARE NOT BEING RAISED, AND EXTERNAL BARRIERS -- WITH SOME POSSIBLE EXCEPTIONS I WILL DISCUSS IN A FEW MINUTES -- ARE NOT BEING RAISED. IT IS TRUE, HOWEVER, THAT THE REDUCTION IN INTERNAL BARRIERS WILL RAISE THE AMOUNT OF COMPETITION ENCOUNTERED WITHIN THE EC.

POTENTIAL OBSTACLES

THAT'S THE GOOD NEWS, MR. CHAIRMAN; BUT THERE IS BAD NEWS AS WELL. THERE ARE SOME INSTANCES WHERE NEW RULES AND BUSINESS PRACTICES BEING DEVELOPED MAY RESULT IN GREATER DIFFICULTIES FOR U.S. COMPANIES.

WE HAVE A NUMBER OF CONCERNS, MR. CHAIRMAN.

FIRST, WHILE IT IS TRUE THAT THE ARCHITECTS OF 1992 ARE PLANNING A MORE OPEN INTERNAL MARKET, IT IS ALSO TRUE, AS EVEN GERMANY'S MINISTER OF ECONOMICS SAID LAST WEEK, "THERE ARE ALWAYS VOICES IN WESTERN EUROPE THAT PRESENT VARIOUS REASONS FOR PROTECTING UNCOMPETITIVE COMPANIES, BRANCHES, AND REGIONS". WE MUST REMAIN CAUTIOUS AND ALERT IN OUR APPROACH TO THE EC'S PROGRAM, AND MUST BE PREPARED TO GUARD OUR TRADE AND INVESTMENT RIGHTS IF THEY ARE THREATENED. AND WE ARE WORKING CLOSELY WITH OTHER GOVERNMENT AGENCIES TO ENSURE THESE RIGHTS WILL NOT BE INFRINGED.

THE EC COMMISSION, FOR EXAMPLE, HAS PROPOSED THAT IN SERVICES AND INVESTMENT THE CONCEPT OF "RECIPROCITY" BE ADOPTED. IF IMPLEMENTED, THIS CONCEPT WOULD BE A RADICAL DEPARTURE FROM THE PRINCIPLES OF NATIONAL TREATMENT AND NON-DISCRIMINATION THAT HAVE BEEN THE FOUNDATION FOR THE LIBERALIZATION OF TRADE AND INVESTMENT IN THE POST WAR PERIOD. FORTUNATELY, DUE TO STRONG RESISTANCE ON THE PART OF SOME MEMBER COUNTRIES, AND PARTLY IN RESPONSE TO VIGOROUS U.S. PROTESTS, EC FINANCE MINISTERS INSTRUCTED THE EC COMMISSION TO CLARIFY THEIR PROPOSAL.

ALSO, THE EC'S PROPOSALS IN GOVERNMENT PROCUREMENT GIVE US CONCERN. WHILE LIBERALIZING SOME PREVIOUSLY CLOSED SECTORS, THE DRAFT REGULATIONS CALL FOR 50% LOCAL CONTENT -- WHICH WOULD SIGNIFICANTLY LIMIT ANY NEW BENEFITS TO U.S. COMPANIES.

THE TREATMENT OF EXISTING NATIONAL QUOTAS, SUCH AS THOSE ON JAPANESE CARS, IS ALSO OF CONCERN. THE EC IS EXAMINING THESE QUOTAS TO IDENTIFY THOSE THAT MAY BE MAINTAINED AT EC-WIDE LEVEL.

DEPENDING ON HOW EC RULES FOR MERGERS AND ACQUISITIONS, SOCIAL POLICY, STATE AIDS AND SUBSIDIES, AND SCORES OF OTHER RULES ARE DRAFTED AND IMPLEMENTED, THEY MAY ALSO BE OF CONCERN FOR THE FUTURE.

FOR NOW, HOWEVER, U.S. INDUSTRY -- INCLUDING SMALL BUSINESS -- IS MOST CONCERNED ABOUT TWO ASPECTS OF THE EC'S PROGRAM: STANDARDS AND TESTING. THESE ARE THE AREAS TO WHICH THE COMMERCE DEPARTMENT HAS TURNED ITS IMMEDIATE ATTENTION.

IN THE STANDARDS AREA, LIKE MOST OTHER ASPECTS OF THE EC'S 1992 PROGRAM, THERE IS GOOD NEWS AND BAD NEWS. THE GOOD NEWS IS THAT COMPANIES WILL ONLY HAVE TO MEET ONE STANDARD TO SELL THROUGHOUT THE EC. THE BAD NEWS IS THAT FOR THE MOST PART, U.S. COMPANIES WILL HAVE LIMITED INFLUENCE AND NO DIRECT VOICE IN SETTING THAT STANDARD.

THIS PUTS THEM AT A DISADVANTAGE IN TERMS OF THE AMOUNT OF INFORMATION AND LEAD TIME THEY HAVE TO MAKE PRODUCTION CHANGES TO MEET THE EUROPEAN STANDARDS.

THE SECOND AREA OF IMMEDIATE CONCERN IS THAT OF TESTING AND CERTIFICATION. THE EC'S PROGRAM FOR HARMONIZATION AND MUTUAL ACCEPTANCE OF STANDARDS IS ACCOMPANIED BY A PROGRAM TO CERTIFY THAT THE STANDARDS HAVE BEEN MET. AN "EC MARK" WILL BE PLACED ON PRODUCTS THAT MEET THE STANDARDS. THIS MARK WILL BE AN ABSOLUTE NECESSITY FOR U.S. PRODUCTS TO BE ABLE TO BE SOLD IN THE EC.

THE EC HAS INDICATED ITS WILLINGNESS TO ENTER INTO NEGOTIATIONS WITH ITS TRADING PARTNERS FOR THE MUTUAL RECOGNITION OF TEST RESULTS, CERTIFICATES, AND LAB DATA. OBTAINING ACCESS FOR U.S. TESTING AND CERTIFICATION, AS WELL AS FOR SELF-CERTIFICATION, IS A HIGH PRIORITY FOR US. IN THE MEANTIME, WE ARE STRESSING TO OUR EUROPEAN PARTNERS THE NECESSITY OF OPENING THE STANDARDS PROCESS TO U.S. FIRMS. AND WE ARE WORKING RIGHT NOW WITH MANY U.S. COMPANIES TO ENSURE THEY HAVE TIMELY INFORMATION ON STANDARDS.

THE COMMERCE DEPARTMENT'S 1992 PROGRAM

THE DEPARTMENT OF COMMERCE HAS MADE THE EC'S 1992 PROGRAM A TOP PRIORITY IN OUR MANDATE TO HELP U.S. COMPANIES COMPETE INTERNATIONALLY. THE COMMERCE DEPARTMENT HAS TAKEN A LEADING ROLE AMONG U.S. GOVERNMENT AGENCIES IN ASSURING THAT U.S. COMPANIES ARE AWARE OF THE 1992 PROGRAM, AND ARE PREPARED TO DEAL WITH THE CHANGES THAT ARE TAKING PLACE IN EUROPE. MOST OF OUR PROGRAMS ARE SPECIFICALLY DESIGNED TO HELP SMALL AND MEDIUM-SIZED FIRMS PREPARE.

IN APPROACHING THE EC'S 1992 PROGRAM, WE DETERMINED THAT A THREE POINT DEPARTMENT OF COMMERCE EFFORT WAS NEEDED IN WORKING WITH INDUSTRY.

FIRST, AN AWARENESS AND INFORMATION PROGRAM TO ALERT U.S. BUSINESS TO THE ENORMOUS CHANGES OCCURRING IN THE EC.

SECOND, A PROBLEM-SOLVING PROGRAM TO DETERMINE WHICH EC DIRECTIVES WOULD HAVE A NEGATIVE IMPACT ON U.S. COMPANIES, AND TO UTILIZE THE COORDINATED INTERAGENCY PROCESS TO RAISE THESE WITH THE EC AND TO SOLVE THE PROBLEMS THAT EMERGED.

AND THIRD, A MARKET DEVELOPMENT AND EXPORT PROMOTION PROGRAM TO HELP U.S. COMPANIES -- PARTICULARLY SMALLER AND MEDIUM-SIZE COMPANIES -- INCREASE THEIR EXPORT ACTIVITIES AND SALES IN THE EC MARKET.

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AWARENESS PROGRAM

THE FIRST TASK WAS TO ENSURE THAT AMERICAN COMPANIES BECAME AWARE OF THE EC 1992 PROGRAM AND OF THE FACT THAT WHAT THE EUROPEANS WERE DOING WOULD HAVE A FAR REACHING EFFECT ON U.S. COMPANY PROSPECTS IN EUROPE.

MANY AMERICAN COMPANIES LACK AN EXPORT ORIENTATION, AND WE WANTED TO LET THEM KNOW THAT THE EC'S EFFORT WOULD BE CREATING A LARGER AND SIMPLER MARKET IN WHICH U.S. COMPANIES COULD SELL. MANY U.S. COMPANIES ALREADY SELLING IN EUROPE WERE UNAWARE THAT THEY SHOULD BE THINKING ABOUT CHANGING THEIR PRESENT EXPORT MARKETING PRACTICES -- AND SHOULD EXAMINE WHAT THEY COULD DO TO STRENGTHEN THEIR COMPETITIVENESS.

AS THE CENTRAL PART OF OUR INFORMATION AND AWARENESS PROGRAM, WE CREATED WHAT WE CALL THE "SINGLE INTERNAL MARKET INFORMATION SERVICE" TO PROVIDE DETAILED INFORMATION, ANALYSIS AND ADVICE TO U.S. COMPANIES DOING BUSINESS IN EUROPE. THROUGH THIS SERVICE WE ARE ABLE TO OFFER ONE-STOP SHOPPING FOR U.S. COMPANIES.

WITH ONE PHONE CALL TO THE COMMERCE DEPARTMENT -- THE PHONE NUMBER FOR THE SERVICE IS (202)-377-5276 -- A COMPANY CAN GET GENERAL INFORMATION ON 1992, DETAILED INFORMATION ON INDIVIDUAL DIRECTIVES, MARKET CONSULTATION, ASSISTANCE IN RAISING PROBLEMS THEY SEE IN THE DIRECTIVES, REFERRAL TO COMMERCE INDUSTRY SPECIALISTS, REFERRAL TO OTHER AGENCIES, AND SO ON.

SO FAR, OVER 6000 U.S. COMPANIES HAVE TAKEN ADVANTAGE OF THIS SERVICE AND HAVE CONTACTED US FOR ASSISTANCE. TO OUR KNOWLEDGE, WE JAVE THE ONLY COMPLETE SET OF EC DIRECTIVES IN THE UNITED STATES. YOU MIGHT BE INTERESTED TO LEARN, MR. CHAIRMAN, THAT SO FAR WE HAVE DISTRIBUTED OVER 50,000 COPIES OF INDIVIDUAL EC DIRECTIVES TO AMERICAN COMPANIES. MOST OF THESE HAVE GONE TO SMALL AND MEDIUM SIZED COMPANIES.

ADDITIONALLY, THE COMMERCE DEPARTMENT HAS REACHED OUT TO U.S. INDUSTRY BY SENDING OUT OVER 100,000 PROMOTIONAL MAILINGS. I HAVE BROUGHT ALONG A COPY OF A SAMPLE MAILING TO MY STATEMENT. THESE MAILINGS HAVE HELPED INFORM U.S. COMPANIES OF THE OPPORTUNITIES, POTENTIAL PROBLEMS, AND ASSISTANCE AVAILABLE.

IN ADDITION, THE COMMERCE DEPARTMENT HAS INITIATED A MAJOR NATIONWIDE PROGRAM OF 1992 BUSINESS SEMINARS, WHICH ARE CONDUCTED BY COMMERCE DEPARTMENT DISTRICT OFFICE AROUND THE COUNTRY. SO FAR, WE HAVE SCHEDULED 15 SEMINARS. THESE SEMINARS ARE SPECIFICALLY TAILORED TO THE NEEDS OF SMALLER COMPANIES.

ADDITIONALLY, OUR PROGRAM INCLUDES "HOW-TO-DO-IT" BROCHURES, INTENSIVE COUNSELING BY COMMERCE COUNTRY DESK OFFICERS AND INDUSTRY SPECIALISTS.

PROBLEM SOLVING

IN A MAJOR EFFORT TO IDENTIFY SPECIFIC CONCERNS IN THE EC DIRECTIVES, THE DEPARTMENT OF COMMERCE IS WORKING WITH TRADE ASSOCIATIONS TO ANALYZE THE IMPACT OF 1992 ON PARTICULAR SECTORS AND TO IDENTIFY SPECIFIC AREAS OF CONCERN. COMMERCE INDUSTRY SPECIALISTS ARE COMPLETING DETAILED ANALYSES OF THE 1992 LEGISLATIVE DIRECTIVES, WHICH WILL BE AVAILABLE TO U.S. INDUSTRY. WE EXPECT A GREAT DEMAND FOR THESE ANALYSES FROM SMALL AND MEDIUM-SIZED COMPANIES THAT DO NOT ALWAYS HAVE RESOURCES TO ANALYZE TECHNICAL DOCUMENTS.

THE DEPARTMENT OF COMMERCE WILL BE WORKING WITH OTHER AGENCIES, PARTICULARLY USTR AND THE STATE DEPARTMENT, (AS WELL AS THE REGULATORY AGENCIES) TO ENSURE THAT THE EUROPEAN COMMUNITY DOES NOT IMPLEMENT PROGRAMS THAT WILL DISADVANTAGE U.S. COMMERCIAL INTERESTS. WE ARE COMMITTED TO SEEKING RESOLUTION OF INDIVIDUAL PROBLEMS AS THEY ARISE, AND TO UTILIZING THE FULL MEASURE OF U.S. TRADE LAW TO PROTECT U.S. TRADE INTERESTS IF NECESSARY.

EXPORT PROMOTION

THE DEPARTMENT OF COMMERCE HAS MOUNTED A MAJOR EFFORT TO ASSIST SMALL AND MEDIUM SIZED U.S. FIRMS TO TAKE ADVANTAGE OF THE CHANGING MARKETING OPPORTUNITIES IN EUROPE. EMPHASIZING THAT U.S. COMPANIES SHOULD BEGIN WORKING NOW -- NOT IN 1992 -- TO TAKE ADVANTAGE OF THESE OPPORTUNITIES, WE HAVE NAMED OUR PROGRAM, "EUROPE NOW".

THROUGH THIS PROGRAM, COMMERCE MOUNTS A FULL RANGE OF EXPORT PROMOTION AND MARKET DEVELOPMENT PROGRAMS. THESE INCLUDE A GROWING RANGE OF "MATCHMAKER" SHOWS IN EUROPE TO HELP SMALLER U.S. COMPANIES FIND AGENTS AND DISTRIBUTORS. OVER THE LAST 24 MONTHS CLOSE TO 250 FIRMS PARTICIPATED IN 9 DIFFERENT MATCHMAKER SHOWS IN EUROPE. ANOTHER SIX MATCHMAKER EVENTS ARE SCHEDULED SO FAR FOR THIS YEAR.

WE HAVE HAD CONSIDERABLE SUCCESS WITH THE MATCHMAKER EVENT, WHICH SCHEDULES ADVANCE APPOINTMENTS FOR A GROUP OF REPRESENTATIVES OF SPECIFIC INDUSTRY SECTORS WITH POTENTIAL EUROPEAN CUSTOMERS, DISTRIBUTORS AND AGENTS. THESE EVENTS ARE CONDUCTED BY OUR FOREIGN COMMERCIAL SERVICE.

ADDITIONALLY, COUNTRY DESK OFFICERS, INDUSTRY OFFICERS, AND FOREIGN COMMERCIAL SERVICE OFFICERS PROVIDE INTENSIVE COUNSELING AND ASSISTANCE TO U.S. EXPORTERS. FIRMS ARE PROVIDED WITH DETAILED INFORMATION ON THE EUROPEAN ECONOMY, INDUSTRY SECTOR DEVELOPMENTS, AND EUROPEAN BUSINESS PRACTICES.

AS PART OF OUR EUROPE NOW ACTIVITIES, WE ARE CURRENTLY WORKING ON AN INTENSIVE COUNSELING BASIS WITH OVER 300 SMALLER U.S. FIRMS THAT HAVE EXPRESSED A STRONG INTEREST IN EXPANDING THEIR EXPORTS TO EUROPE. MANY OF THESE FIRMS HAVE ALREADY ACHIEVED SIGNIFICANT EXPORT SALES AS A DIRECT RESULT OF THE EUROPE NOW COUNSELING. INDIVIDUAL COMPANY SUCCESSES HAVE RANGED FROM $10,000 TO $3 MILLION IN ANNUAL SALES.

FINALLY, MR. CHAIRMAN, I WANT TO NOTE THAT THIS FALL THE DEPARTMENT OF COMMERCE WILL COSPONSOR WITH THE EUROPEAN COMMISSION THE FIRST INTERNATIONAL EXPORT SHOW EXCLUSIVELY FOR SMALL BUSINESS -- "EXPORT 89". THIS SHOW, IN FRANKFURT THIS OCTOBER, WILL PROVIDE SMALL U.S. COMPANIES WITH A NEW OPPORTUNITY TO DEVELOP EXPORTS AND MAKE KEY BUSINESS CONTACTS.

THUS, MR. CHAIRMAN, THE DEPARTMENT OF COMMERCE, COORDINATEDWITH OTHER CONCERNED AGENCIES, IS WORKING TO INFORM U.S. INDUSTRY -- ESPECIALLY SMALL BUSINESS -- OF THE PROBLEMS AND OPPORTUNITIES IN EUROPE 1992, AND TO HELP THEM TAKE ADVANTAGE OF THE OPPORTUNTIES AND INCREASE U.S. EXPORTS.

THANK YOU, MR. CHAIRMAN.

DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION

Funding for Services to American Business

Question:

But I would like to see exactly where the Department of Commerce's true budget was, say three years ago, for helping American businesses in Europe, and with the devaluated dollar what that buying power is today and what services have been cut to American businessmen that were provided, three, four, five years ago that you would like to provide today would be ideally provided today to help us do better in the European markets?

Answer:

In 1985, the U.S. and Foreign Commercial Service (US&FCS) spent $36.9 million on overseas operations. In 1988, that amount was $40.0 million. However, due to the decline in the dollar's purchasing power overseas, it would have cost approximately $49 million in 1988 to buy the same level of services provided in 1985. This means the level of services provided to American businesses overseas decreased almost 20% from 1985 to 1988.

In 1985, approximately 34% ($12.5 million) of the US&FCS overseas budget was spent in Europe. By 1988, this had grown to 40% ($16 million). Despite this increased share of the overseas US&FCS budget, the European budget bought approximately 20-25% less in 1988 than in 1985. To retain the 1985 program levels in Europe would have required approximately 45% of the 1988 overseas budget which would have meant substantially cutting budgets or eliminating posts elsewhere in the world.

The US&FCS offers the same overseas services now as it did in 1985. What it cannot offer is the same level of services.

To help restore the level of services the US&FCS offers overseas, the Administration requested a $9.2 million increase in the 1989 President's budget and is requesting $6 million in 1990. The 1990 increase would make good progress towards restoring program levels which have been cut by the decline in the purchasing power of the dollar overseas and budget constraints.

The request is not specific to Europe. Decisions to allot funds to specific posts are based on market potential. These decisions are based on costs of providing services, relative demand for these services, and the potential effectiveness of these services in encouraging and sustaining export growth.

Given the importance of EC 92 to future American exports, we will give serious consideration to Europe's needs.

STATEMENT BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS

February 9, 1989

Michael Calingaert

Visiting Senior Fellow

National Planning Association

IMPLICATIONS OF THE EUROPEAN COMMUNITY'S 1992 INTERNAL MARKET PLAN FOR AMERICAN FOREIGN ECONOMIC POLICY

INTRODUCTION

The Treaty of Rome, which brought the European Community (EC) into being in 1958, foresaw the creation of a common market — that is, a single economic unit — among the member states. Although the EC has popularly been called the Common Market for the past thirty years and considerable progress has been achieved in removing the internal barriers, the Community has remained essentially an amalgam of 12 individual economies.

However, in response to growing concerns not only that the EC was failing to achieve the goal of a single market but, more importantly, that this failure entailed a heavy cost which adversely affected the competitive position of EC firms, the decision was taken in 1985 to launch a program to eliminate the remaining barriers to the free movement of goods, services, persons and capital inside the EC. While many proposals had already been made to remove one or another such barrier — in many cases long ago — the program to "complete the internal market" was noteworthy in several respects.

First, it was contained in a comprehensive package of about 300 proposals, encompassing all the measures deemed necessary to arrive at a genuine common market. Secondly, it was presented as an indivisible package — in other words, one which had to be accepted as a whole without member states being able

to pick and choose among its contents. Third, the package was accompanied by a timetable for each measure, indicating the date by which a formal proposal should be presented to the members, the date for adoption by the EC and the one for implementation in the member states. The entire procedure was to be completed by the end of 1992 — hence the now-popular slogan "Europe 1992." And finally, the member governments formally undertook — by treaty, ratified in each country — to endeavor to complete the package by the agreed deadline.

PROGRESS ON THE 1992 PROGRAM

It is crucial to recognize that the process toward "Europe 1992" is now underway. By the end of 1988 the two operative words to describe the program's status were "momentum" and "irreversibility." A strong political consensus has formed behind the program; the private sector not only supports the effort but acts increasingly on the assumption that it will be successful; and the peoples of the Community have come to expect that "Europe 1992" will become a reality.

1988 was a year of remarkable progress. A number of difficult decisions were taken, indicating that despite their divergent interests the member states could forge compromises. Not surprisingly, progress has been faster in some areas than others. However, "Europe 1992" should be viewed as a process, not an event. The entire package will not be completed by the end of 1992; the process of economic integration will continue well into the 1990's. Nonetheless, by 1992 we will see a far different EC from the EC of today.

Progress on "1992" can best be assessed by separating the parts of the program into three categories:

Good progress:

— Capital liberalization. A key ingredient of a single market is the ability to transfer capital from one country to another without restriction. While a few members impose no such restrictions, most member states maintain restrictions, primarily relating to short-term capital movements and the activities of private individuals. In the case of countries with weak

currencies these controls are imposed in order to prevent capital outflow and corresponding pressure on the currency. An additional consideration is the difference among the member states in their taxation of unearned income; the higher-taxing governments are concerned that capital will flow to countries with lower levels of taxation.

Despite the very real dangers that capital liberalization poses for several of the EC members, agreement was reached in mid-1988 to phase out the remaining restrictions -- for the eight more developed countries by mid-1990 and for the others by 1992 or possibly 1995. At the same time the member states pledged to adopt a method for harmonizing their taxes on dividends and interest in 1989 (a pledge which, however, is proving difficult to fulfill).

-- Movement of persons. Workers in one member state can move freely from one country to another as long as they are employed. However, many EC members have restricted the recognition of academic degrees and professional qualifications obtained in other EC states. Such restrictions have reflected a combination of genuine concern over the level of competence, differences in national customs and practices, and fear of competition. While agreement was reached establishing conditions for recognition of some professional qualifications, that was accomplished only with difficulty and delay (the agreement on architects, for example, came after 17 years of negotiation).

In 1988 the EC accepted a general, rather than sectoral, approach to this problem. The member states agreed to phase in the principle of mutual recognition of the degrees and qualifications obtained in other EC countries. With only a few exceptions, degrees and qualifications will be accepted regardless of the required period or course of study, thus enabling EC professionals to move within the Community with far greater ease.

Moderate progress:

-- Liberalization of services. In most member states the service sector has been heavily regulated, both in terms of the right of establishment and the activities of firms. This situation has obtained for financial institutions,

transportation and in non-traditional areas relating to the information revolution. The result has been massive inefficiencies and costs to the Community.

The EC has recognized services as a priority area for action, particularly financial services, which play an increasingly important role in the economy. Accordingly, it has begun a process of deregulation coupled with the principle of "home country control," under which a firm duly established in one member state will be able to operate freely throughout the EC under the rules and supervision of the country in which it is established. This concept is embodied in the banking proposal now before the member states, as well as proposals for insurance and investor services.

Action has also begun in transportation. Some initial steps have been taken in the direction of liberalizing the restrictive national civil aviation regimes, and a landmark decision was taken in mid-1988 to phase out the quotas and other national restrictions on inter-country road transportation.

— Harmonization of legal regimes. To a considerable extent, business operations in the EC are governed by national laws and regulations. Although some harmonization of measures has taken place — for example in accounting and product liability — cross-border activities are rendered more complicated and difficult than they would be in an integrated market. On the whole, there is no provision for an EC-wide company; trademarks and patents are issued by the individual countries; and there are no EC copyright provisions.

Establishment of EC trademark and patent regimes is generally agreed, though blocked at the moment by technical issues. The EC has begun consideration of the range of copyright issues. However, efforts to achieve uniformity in company law have been stymied in large part by differences among member states on how to deal with a number of social issues, notably the requirement in some countries for worker participation on boards, strongly opposed in others.

— Harmonization of regulations and technical standards. One of the most

obvious manifestations of the fragmented EC market, and one adding significantly to the cost of doing business in the Community, is the diversity among EC members of regulations and standards regarding manufactured products, particularly in the high-tech area. Perhaps in this area more than any other, the absence of commonality in EC standards and regulations is seen as decreasing the competitiveness of EC firms. Efforts have been made over the years to work out common regulations and standards in a number of areas, but it has proven difficult to gain EC-wide acceptance of such measures because of the technical complexities, the huge and increasing volume of products to be covered and conflicting national interests.

In recognition of the inability of the EC to make significant headway in these efforts, the EC decided to adopt what it termed a "new approach" to standards-setting. EC-wide agreement would be needed only on "essential requirements," that is those affecting consumer health and safety and the environment. As long as countries' regulations and standards conformed to those requirements, their products could trade freely throughout the EC, even though the regulations and standards themselves varied. At the same time, common standards would be negotiated over time in the European standards bodies. Although this effort is still in its initial stages, some "new approach" standards have been adopted, and by all counts progress is good.

— Liberalization of public procurement market. Purchases by public entities in the EC account for a substantial share of gross domestic product, perhaps as much as 15 percent. Traditionally these markets have been highly protected. According to an EC estimate, only 2 percent of contract awards are made to firms outside the purchasing country, while about 75 percent go to "national champions" on the basis of tailored tenders. Not surprisingly, the costs and inefficiencies resulting from this protection are enormous. Efforts by the EC prior to 1985 to reduce the level of protection in this area were unsuccessful.

However, in the "1992" program the EC has placed heavy emphasis on the

need to open up public procurement by establishing a transparent and non-discriminatory system of EC-wide procurement with provision for redress for unfairly treated firms and enforcement by the EC. Agreement has been reached to open up the procurement market for supply contracts above a minimum amount. More importantly, measures are now under consideration for opening up the system for public works contracts and to bring under the ambit of EC public procurement regulations four sectors which have up to now been excluded — energy, telecommunications, transportation and water supplies.

Little progress:

— Removal of border controls. The maintenance of controls at the borders between member states is the most visible and psychological evidence of the absence of a single market. These controls are necessary because of the differences between members in taxation, animal and plant health requirements, import restrictions, immigration regulations and, of increasing concern, because of drug trafficking and terrorism. While these controls have become less onerous in many respects — particularly for border crossing by individuals — they continue to add substantial costs to the movement of goods.

None of the controls carried out at the border is easily eliminated or carried out elsewhere. Drugs, terrorism and — increasingly — illegal immigration are issues of deep concern to the Community, and border controls are deemed important in limiting their access to individual member states. The implementation of a common tax regime is hotly disputed (see next section); the harmonization of animal and plant health regulations is highly complex and the process has moved very slowly; and while the EC has decided in principle to eliminate national import restrictions (with the exception of those in a few sectors considered sensitive), it has not yet moved in that direction. Although consideration is being given to carrying out at least some of these various controls at places other than at the border, little progress has been made in this direction.

— Harmonization of indirect taxation. Each EC member state maintains its own system of value added tax (VAT) and of excise taxes. The different VAT systems vary considerably in coverage, tax rates and share of government revenue; the national excise taxes cover generally the same range of items, but the rates diverge even more than those of the VAT. In order to prevent competitive distortions resulting from these variations, taxes of the exporting country are remitted and those of the importing country are imposed when the goods pass from one member state to another.

The EC has recognized that it is impossible, and also unnecessary, to establish common taxes throughout the Community. Rather, what is required is an approximation of the taxes such that the differences do not materially affect the inter-member competitive situation. Toward this end, the EC has been considering a proposal that all members set their basic VAT rate within the 14-19 percent range with a reduced rate for "necessities" in the 4-9 percent range and that they agree on a specific list of excise tax rates — a proposal intended to be essentially revenue-neutral in its effects on the member states. However, quite apart from the sensitivities aroused in member states by the prospect of giving up some of their national prerogatives in setting policy on raising revenue, acceptance of the proposal would in many cases require major changes in the national revenue system — hardly an easy task economically or politically. As a result, there has been little movement toward a consensus.

THE PROCESS OF POLICY FORMULATION AND IMPLEMENTATION

The decision-making process in the Community is relatively straightforward:

— the European Commission (the EC's executive body, made up of EC civil servants) makes proposals;

— the Council of Ministers (on which each member state is represented) approves the proposal (with or without modifications), though not before it has

also been considered by

— the Parliament (consisting of 518 directly-elected representatives) has two opportunities to consider (and, under some circumstances, to modify) the proposal; and

— depending on the nature of the measure, it either automatically becomes law in the member states or, more often, each state is obligated to complete implementing procedures within a specified period of time.

This process involves interaction between the member states and the Community institutions as well as interaction among the three EC bodies themselves. Member states informally influence the nature of the Commission's proposals, yet only the Commission can make formal proposals; there is tension built in between the Commission (representing a Community perspective) and the Council (which reflects member state interests); and the Parliament, the only one of the three institutions consisting of directly elected representatives, reflects a spectrum of national and political party interests.

A major contribution to the "Europe 1992" program was the institutional changes contained in the Single European Act, the first major amendment to the Treaty of Rome, which came into effect in 1987. Critically important was the substitution of weighted majority voting in place of unanimity among the member states in the Council on most of the issues involving creation of a single market — and that, of course, will vastly increase the EC's ability to arrive at decisions. The other major change was the enhancement of the powers of the European Parliament. The Act enables the Parliament to amend proposed legislation and, under certain circumstances, to override the Council.

Moving from the mechanics of decision-making to the philosophy behind the "Europe 1992" program, it is important to note the central role assigned to liberalization and deregulation. It is no accident that the movement toward a single EC market gathered speed at a time when most countries, irrespective of their political coloring, were moving away from strong government involvement in the economy. In fact, a considerable degree of consensus was reached on the

view that earlier efforts at integration had failed because they were premised on an attempt to legislate uniform laws and regulations among the member states of the Community.

Rather, it was increasingly recognized that a single market could most effectively be established on the basis of reducing the role of government in the economy and of mutual recognition of laws and regulations of the other countries. Two examples, alluded to above, will illustrate the point:

— In the highly regulated banking sector, the proposed EC approach is to establish general provisions which each member state must include in its national regulations governing banks regarding such basic matters as initial capital requirements, solvency ratios and oversight over the interests and identity of major shareholders. However, once a bank has been duly established under these national regulations, it can operate in other member states without requiring the latter's authorization. Furthermore, a form of activity permitted in the country of establishment can be performed in the receiving country, even if it is not permitted for banks established there (as long as it is on the EC's approved list).

— In the past EC standards consisted of comprehensive, technical documents. Under the "new approach," the "essential requirements" will come to only a fraction of the length of the old-style documents. In addition, they will be limited to providing the required attributes of the product instead of specifying precise details. Thus, for example, rather than explaining how a tractor should be constructed, the "new approach" will simply require that the tractor be built in such a way as not to tip over.

The general principle, then, is that if a good or service can be legally traded in one member country, the presumption is that it can be traded throughout the Community, as long as it cannot be proven that it endangers the health and safety of the consumer. In other words, harmonization, rather than uniformity, is the watch-word.

At this point, however, it is important to consider the implications of

such a policy for U.S. interests, particularly those of American small business. To the extent that such firms have established subsidiaries in the EC, they should expect generally to receive non-discriminatory treatment, since their subsidiaries could expect to be defined as "European firms."

Nonetheless, even in that case the emergence of the reciprocity issue raises potential problems for the United States. The EC's banking proposal would require that in order for a non-EC bank to benefit from the "single banking provision," similar treatment should be accorded in their country to banks from EC member states. Similar proposals have been made for insurance and investor services. If such a provision were applied to U.S. enterprises, their opportunities could well be limited, since in many respects the United States could not offer similar treatment — even though it practices non-discrimination against non-U.S. firms.

More relevant for small businesses is the issue of harmonizing regulations and technical standards. Clearly, a reduction in the number of regulations and standards to be complied with will facilitate marketing within the EC, as well as expanding the scope of that market. However, the critical consideration will be the nature of the regulations and standards adopted. To the extent they are written in a manner that impedes market access, U.S. firms will be disadvantaged. Unfortunately, unlike the transparent U.S. system of public notice, comment periods and consultation which is available to all interested parties, it is difficult for U.S. firms not established in the EC to influence the process. Rather, participation by the private sector is largely limited to EC firms and their representative organizations.

A related issue is that of testing and certification by bodies in the EC. Apart from the problems caused by their lack of uniformity, the EC is moving in the direction of certification by a third party, whereas in the United States self-certification is largely the norm. The danger exists that the recognition of U.S. certification by some member states for certain products on the basis of a bilateral arrangement with the United States will be terminated and, more

generally, that U.S. goods will have to be tested and certified inside the EC.

ROLE OF THE ADMINISTRATION AND CONGRESS

It is critical for the United States to recognize the far-reaching significance of the changes in the offing as a result of "Europe 1992." The transformation of 12 relatively separate economies into a single economic unit will change the nature of doing business in the Community and the competitive situation in the EC.

Accordingly, it must be a priority area of U.S. policy to seek to ensure that the "Europe 1992" program is carried out in ways that do not damage U.S. economic interests. In other words, U.S. firms should have equal opportunities to compete in the EC, barriers to entry and operation in the EC should not be raised, and decisions should be taken in the EC in accordance with a transparent system in which interested U.S. firms can participate.

The task for the Government, then, is two-fold: to monitor developments and to seek to influence decisions taken in the EC. The first of these tasks is no simple matter. The Community is taking actions on the "1992" program across a broad range of issues. Monitoring will require keeping track of 300 separate proposals, about one-third of which have now been adopted, involving different individuals, policy considerations and national interests. In addition, actions in several areas not formally part of the "1992" program but directly related — such as EC research and development policy, social policy and telecommunications — will similarly bear close attention. And it will also be necessary to follow general policy discussions and decisions in the EC that will influence the direction taken on specific measures.

The U.S. business community can play a useful role in this effort. In many cases it will have better access to information, either through its operations in the EC or through its contacts, and it can also flag potentially important developments. This is particularly the case since so much of the "1992" program is technical in nature.

The task of influencing EC decision-making presents a number of challenges to the U.S. Government. The process is far less transparent than decision-making in the United States. Formally, proposals are not public until they emerge from the Commission, and once they do, there is a tendency for Commission officials to be reluctant to re-open what may have been a difficult internal negotiating process. The United States can seek to persuade member countries to adopt certain positions in the Council's deliberations on measures, but such efforts are at times resented as "outside interference." And the Parliament is relatively new as an influence center and with a rather amorphous power structure.

Despite these difficulture it should be recognized that Brussels is becoming more open to outside consultation. To some extent this reflects the fact that hard-working Commission officials delving into new areas appreciate substantive input, based on experience and expertise, as they develop new policies. The Parliament, too, appreciates input which will enhance its ability to determine the outcome of proposals. But in a more general sense, the atmosphere in Brussels seems to be shifting from a "closed shop" to considerable transparency.

The U.S. executive branch is well aware of the importance of "Europe 1992" and its implications for U.S. interests. The agencies sharing the main responsibility in this area — Commerce, State, Treasury and the U.S. Trade Representative — are actively engaged in the functions set forth above. And coordination among them, which is essential to a successful policy, appears to be good.

But this critical area of U.S. policy should not be the sole prerogative of the executive branch. The Congress can also play an important role. Hearings such as this one will extend the knowledge and understanding in the United States, particularly in the business community, about the important developments taking place in the EC — developments which entail both opportunities and risks. In addition, the hearings, plus Congressional travel

abroad and meetings here with visiting Europeans, will emphasize to the Community that the United States is following the "Europe 1992" process with a critical eye and that while it welcomes moves toward a more open and less regulated economy, it will strongly defend U.S. economic interests.

EUROPE 1992:

THE FINANCIAL SERVICES INDUSTRY

Joan E. Spero
Senior Vice President
American Express Company

Testimony Before
House Committee On Small Business on
"Implications of the European Community 1992
Plan for American Trade Competitiveness"

House of Representatives
Washington, D.C.

February 9, 1989

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Mr. Chairman, my name is Joan Spero and I am Senior Vice President of American Express Company. I am pleased to have been asked to testify before the Committee on Small Business on the "Implications of the European Community 1992 Plan for American Trade and Competitiveness".

Five hundred years after a European discovered the New World, U.S. business has again discovered Europe. In recent years, we have been mesmerized by the Pacific Basin and discouraged by Euro-sclerosis. Now that 1992 is upon us, suddenly we have Euro-phoria -- and a touch of Euro-phobia. Today I would like to look at the forces pushing for an internal market in financial services, at the emerging nature of that market, and at some of the opportunities and problems it poses for companies like American Express.

Financial Services Revolution

I am convinced that Europe will complete its internal market -- probably not by 1992; it may take until '93 or '4 or '5. The point is: it will happen. The political strategy for 1992 is proving very effective and, equally important, business is on board. That prediction is especially true for financial services where powerful market forces are driving the creation of an internal market for financial services.

One of the major developments of the last decade is the revolution in world financial markets. These markets have exploded in size and importance to the point where world

financial flows now exceed goods flows by a factor of 50 to 1. This financial services revolution has been characterized by three major developments:

- First, deregulation around the world has ended many controls both on foreign investment in financial services and on international capital flows. London's so-called "Big Bang" and other "bangs" around the world are breaking down barriers between different types of financial institutions, offering more opportunity to foreigners, and revamping financial regulation and supervision.
- Second, the revolution in communications and computer technology has vastly increased the volume, speed, and global reach of financial transactions, while sharply reducing costs.
- Third, one consequence of these developments has been a blurring of traditional boundaries between different types of financial institutions. Securities firms are moving into areas once dominated by banks, and banks are taking on characteristics of securities firms or investment banks. Firms are also diversifying their overseas activities and developing international alliances -- many across traditional institutional lines.

All of this adds up to:

- A rapid globalization of financial services. Integrated global markets have developed; national markets now have

foreign international participation; and, increasingly, national markets are linked electronically by 24-hour trading systems and offer an array of truly global products.

Financial Services Directives

What specifically is planned for the internal market in financial services? Among the 300 directives that have been proposed are directives that touch on virtually every aspect of financial services, including: capital liberalization, insurance, banking, securities, electronic payment instruments, and an important related area, telecommunications. The financial services part of the internal market is moving further and faster than most others. The commission has issued draft directives on banking, investment services, insurance, and capital movements. This year will see directives on capital adequacy and conduct of business rules. Let me outline briefly two of the most important proposals, those on capital movement and banking.

1. **Capital Movement**

European countries have long used capital controls to maintain exchange rates and manage their balance of payments. Currently, several European countries have payments controls in place. As you can imagine, freedom of capital movement is basic to the creation of a financial services market. Thus, the

adoption in June of the directive on capital liberalization was an important step towards the internal market.

It entitles all EC citizens and companies incorporated in a member state to open bank accounts in any other member state. It also allows EC banks to lend money anywhere within the Community. The directive permits a member state to reimpose capital controls in a currency crisis, but it must first obtain approval of the European Commission. By liberalizing the flow of capital within the EC, this directive promises to increase both the volume and the volatility of capital flows. The problem of tax distortion and evasion expected to result from the differences in national tax laws will have to be addressed. France, for example, has refused to implement the directive because there is no common withholding tax on bank interest.

2. Banking

The proposed Second Banking Directive was issued in January 1988. It is the model for directives in investment services, insurance, and other areas, so its central elements are key to the EC's concept of an internal market in financial services. These elements are:

1 All countries in the EC will agree to recognize home country regulatory control. Home country regulation is the key operating principle of all internal market directives in financial services. Under this system, efforts will focus on establishing broad policy guidelines and then

allowing each country to adapt its own laws and regulations accordingly. As long as it follows EC guidelines, a regulatory and supervisory regime in one state will now be officially recognized in the other 11 states.

- Therefore, a firm will need only one license rather than 12 to operate throughout the EC. Home country regulators will, in effect, issue "passports" to licensed banks, insurance companies, and securities firms, which will allow them to travel freely within the EC, opening branches as and when they choose.
- A financial institution established in one member state will be able to:
  - -- open a branch in another member state without authorization, and
  - -- pursue in the rest of the EC all activities allowed by the legislation of its home country.
- So, both companies and citizens will be free to seek out the "best buy" in whatever market they choose, and producers of financial services will be able to offer their wares throughout the EC. It is the double freedom of <u>both</u> suppliers and customers to move across national boundaries with comparative ease that makes the EC proposals so significant.
- The banking directive also aims to reduce barriers among different types of financial institutions. The scope of banking is defined broadly, ranging from lending to leasing to securities trading and underwriting. The expectation is

that, through a process of competitive rule-making, EC member states will gradually move toward similar systems of universal banking such as those now in Germany.

Impact of Internal Market

The internal market will have a significant impact on financial services, especially consumer financial services. Here is the good news:

- First, barriers in consumer financial services are among the highest of all industries in Europe, so their removal will produce significant potential gains.
- Second, firms will be able to rationalize internal operations and increase efficiency. This does not mean, however, that firms will no longer have to target their strategies for different countries; they will still have to respond to local differences. But firms will be able to create products for different markets rather than for different national regulators.
- Third, liberalization of telecommunications and data processing services, also on the internal market agenda, will benefit the financial sector. The cost of telecommunications services should go down and the quality up.
- Fourth, the financial services industry will also benefit from the expected growth in the wealth of EC consumers.
- Finally, closer harmonization of tax regimes, a common

legal structure, and common competition and merger regulations will all help produce a level playing field where business decisions can be taken on a rational basis.

There is also some bad news, however:

- First, we will see a period of great turmoil in financial services before the "dust settles." We expect huge over-capacity in the industry as essentially local competitors go multinational even when it does not make good economic sense to do so.
- Second, as the internal market unfolds, we may see an increase in industry concentration and cartelization. As a result, there will continue to be a critical role for EC competition or antitrust policy to ensure that there is no abuse and no discrimination against foreign-based firms. A recent example occurred a year ago, when a number of banks announced a "European Accord" to form a common payment system that would be open to "European banks" only. They requested exemption from the EC's competition laws, arguing that the Accord furthered the completion of the internal market. In fact, it was a thinly disguised attempt to create an exclusive bank cartel. As a result of protests by business and consumer groups, the competition directorate of the European Commission investigated, and the banks have since been requested to modify the Accord to eliminate its anti-competitive features.

A third, related issue is that protectionism against non-EC institutions may be a by-product of intra-EC liberalization. Many Europeans are concerned that 1992 will open their doors to Japan, and to a lesser extent to the Americans. They know that foreign firms are more accustomed than many European firms to operating as if Europe were one market. They also know that many European firms are used to protected national markets. Thus, we can expect that there will be powerful forces arguing for a Europe for the Europeans.

Reciprocity

This brings me to the issue of reciprocity. There is growing concern about possible protectionism in financial services as a result of the identical reciprocity clauses in the banking and investment services directives. According to the reciprocity principle, an institution based outside the EC will be permitted access to the European market only if its home country grants reciprocal treatment to all other financial institutions. American institutions, for example, could be caught in this net because the U.S. does not have universal banking and still maintains barriers between commercial and investment banking through the Glass-Steagall Act. The U.S. could also be caught because we do not have interstate banking. The reciprocity proposal came as quite a shock to the foreign business community. Under Article 58 of the Rome

Treaty, a company -- no matter what its parentage -- has always been considered European for EC purposes if it is incorporated and does business in any EC member state. Now, it seems, parentage may determine who is European.

As you might suspect, there is considerable concern in the business community at present on this topic. I like to think of reciprocity with a small "r" as opposed to a capital "R." The "good" reciprocity, the one with a small "r," is that negotiating principle which says that benefits should be roughly mutual. That is what it means in GATT.

Then there is the other reciprocity with a capital "R." It means tit for tat -- bilateral or sectoral balancing. It flies in the face of what we know about the real world of trade. And it is dangerous. The question is: How will the EC define reciprocity? The Commission has somewhat allayed our initial worst fears -- but not all of them. Recently it moved away from mirror-image reciprocity and said reciprocity meant "equivalent access" or "equivalent freedoms." However, "equivalent" has yet to be defined. Currently, signals from the Community suggest that application of reciprocity may be discretionary not automatic.

The Commission also decided that, in banking at least, it would not apply reciprocity retroactively. So, foreign-owned subsidiaries already established in the EC could not be deprived of their rights under existing EC law. However, this leaves open some very important questions:

1 What about newcomers?

- What about an established institution which wants to expand into a new business sector?
- What about financial institutions other than banks?

Foreign anxieties are not likely to be assuaged by the contradictory signals from European officials and industrialists. Some Community officials, for example, have said publicly that they need not worry about including reciprocity in financial services because services are not yet covered by the GATT. And we know that the implementation of reciprocity is still being debated in Brussels.

While we appreciate the legitimate concern of many Europeans that the benefits of a long struggle to achieve a single market could potentially be syphoned off to the Far East or North America, we believe that a "Europe for the Europeans" or a "Fortress Europe" would not be in anyone's interest. It is in Europe's own best interest -- and in the world's -- that the Community resist the temptation to raise new walls around Europe even as the walls within Europe are torn down.

We should also not forget that the Uruguay Round of GATT negotiations is unfolding at precisely the same time as the internal market. Great care should be taken to ensure that nothing is done within the internal market that violates GATT rules or undermines what could prove to be the most important multilateral trade negotiation in recent memory.

Developments in the Marketplace

Now, what is happening in the financial marketplace? Much of the European private sector is reacting positively to 1992. Many companies are taking aggressive action such as:

- building a Europe-wide distribution network,
- allying with one or more foreign firms to swap products and distribution systems, or
- buying a European network.

Governments in many cases are encouraging them by promoting the rationalization of industry at the national level, as in Spain and France. A major repositioning is taking place in the markets through frenetic merger and acquisition activity in asset management, insurance, banking and lending, and payment systems.

After a decade when many European companies seemed more interested in investing in the U.S. than in other EC countries, major European corporations are now trying to establish pan-European networks. Their efforts will be aided by the gradual liberalization of telecommunications, which will facilitate the linkage of computer systems and direct marketing efforts.

As a result, price competition will be rampant as competitors battle for market share. Only the low-cost producers and the entities that control consumer franchises will survive.

Business Strategy

Let me conclude by offering some thoughts about what U.S. business should be doing about 1992. Most obviously, each company must examine its strategic position in Europe and determine for itself the business opportunities and the competitive threats it will face. At American Express, we have been:

- raising the consciousness of our subsidiaries about the importance of 1992
- monitoring the evolution of directives which will affect our company and analyzing their potential impact
- forming, in each of our major subsidiaries, a special task force on 1992 to explore new business strategies in Europe.

In addition, we believe we should try to shape the evolving policy of the Community as it affects our businesses. The plans for the completion of the internal market are just that, plans. The program is incomplete; it is malleable; business, including U.S. business, can influence the 1992 program. American business is well-positioned to work with the European Commission to shape the outcome of the internal market directives. In recent years, the Commission has become more open to consulting business as it develops policy. In part, this reflects a change in European attitudes toward business. It also reflects the very practical need of Commission officials for detailed sectoral expertise as they go about drafting very complex legislation. We have found

the Commission very open to private sector consultations. So, we have no one to blame but ourselves if we don't take the initiative to represent our views in Brussels.

While we must take the lead, the U.S. government must also play a role. Washington and its outposts need to keep the EC honest on major issues such as reciprocity and national treatment. These are central trade issues and must be dealt with as such. In fact, strong U.S. opposition to the EC reciprocity proposals has encouraged the Community to think again about its proposals. The U.S. also needs to stand ready to help U.S. businesses negotiate with the Community in individual cases of trade discrimination. It needs to help provide information to those businesses which do not have a significant presence in Europe, especially small and medium size businesses, which do not have sufficient resources to keep abreast of developments. And the U.S. needs to push forward in the Uruguay Round to keep up the pressure for opening markets.

To do all of this, the issue of 1992 needs to be on the agenda in Washington -- not as a crisis, or as a reason for panic or retaliation, but as a subject requiring high-level attention. And that is also something we in business can be urging on our own government.

Conclusion

In conclusion, the progress on 1992 has been impressive. The financial services industry is responding with vigor and imagination to the challenges presented. But we cannot forget our responsibility to work with our governments and with each other to ensure that Europe -- and the U.S. -- remain open, active partners in the trans-Atlantic community and the international system as a whole.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

TESTIMONY OF

HONORABLE FRANK S. SWAIN

CHIEF COUNSEL FOR ADVOCACY

U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE

SMALL BUSINESS COMMITTEE

OF THE

U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1989

SMALL BUSINESS CONTRIBUTIONS TO U.S. EXPORTS

- Small businesses in the U.S. are significant exporters, accounting for more than 12 percent of the value of manufactured direct exports by vessel and as much as 9 percent in additional value shipped through wholesalers and brokers.

- Small firm manufacturers appear to export in proportion to their production since small businesses account for about 21 percent of all manufactured goods produced in the U.S.

- Small business exports are of highest value in the machinery, chemical and food products industries. Small businesses have the largest percentage shares of leather products, apparel and fabric products and miscellaneous manufacturing industries.

Mr. Chairman and members of the Committee, I am pleased to appear before you on the issue of small business exports and Europe 1992. The participation of small firms in exporting is important to the small firm economy and the long term competitiveness of our nation. Europe is a large market with obvious cultural and political similarities to the U.S. According to the Department of Commerce, our total exports to the European Community ("EC") exceed $500 billion, compared to $200 billion with Canada and $130 billion to Japan. Expansion of small firm exports in general, and to Europe in particular, is a worthy national goal. Consideration of the consequences, positive and negative, of EC 1992 proceedings on our small exporters is an important issue.

A basic dilemma in analyzing the U.S. export record is a general lack of information on the current level of involvement of U.S. small business in exporting. The implications of this information to our government's trade policies as well as to government's role in export promotion programs is important. Because there has never been a credible estimate of the value of small business exports, the Office of Advocacy has researched this question and I am pleased to present our findings to this Committee.

Small businesses account for a significant share of U.S. manufactured exports and the small business share of exports probably reflects its share of total manufacturing production, about 20 percent. I believe that this new evidence about the significance of small business exports clearly shows the need to look at problems and opportunities for small U.S. firms under a European internal market, and I applaud the Committee for focussing on this important change in the global marketplace.

The Office of Advocacy commissioned a study[1] to quantify the value of small business share of U.S. manufactured exports since no such data exists. The Department of Commerce does tell us that in 1984, 40,000 out of 59,000 manufacturing exporting establishments were owned by companies with fewer than 500 employees.[2] Commerce does not currently have data on the share of export value represented by these 40,000 establishments.[3] Until more comprehensive data is released by the Department of Commerce, the SBA study is an important starting point.

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[1] Jack Faucett Associates, Small Business Exports of Manufactured Products, 1985, (December 1988, Contract SBA-2066-AER-87).

[2] Testimony of Dr. Michael R. Czinkota before the Committee on Small Business Subcommittee on Exports, Tourism, and Special Problems, U.S. House of Representatives, October 4, 1988.

[3] The Department of Commerce International Trade Administration, in cooperation with the Bureau of Census is developing a small business database which should provide more detailed information about exporters, including their size.

The Advocacy study indicates that business firms with fewer than 500 employees account for 12.2 percent of the value of manufactured goods exported directly by manufacturers by vessel. In addition, small manufacturers exporting through wholesalers and brokers may represent an additional 9 percent of the value of U.S. manufactured goods, thereby raising the total small business share of exports to about 21 percent. This latter figure is notable because small businesses account for about 21 percent of all manufactured goods produced in the U.S.

Our study utilized a novel database constructed expressly for this project. The database was constructed by merging two separate data files--namely, the PIERS (Port Import Export Reporting Service) file of the Journal of Commerce and SBA's Small Business Data Base (SBDB). The PIERS file (which covers exports by vessel) provided information on the tonnage and type of good exported, identification (name and address) of the exporting establishments, and the exports' respective destinations. The SBDB provided the industry classification and ownership linkages of the exporting establishments; the latter allowed for the identification of the firm employment size of exporters.

The study analyses 1985 direct shipments by vessel by 23,732 manufacturers or their sales offices (20,890 or 88 percent of which had less than 500 employees and 2842 or 12 percent of which had more than 500 employees). The value of direct shipments by manufacturing firms covered in the report was $25.8 billion. Of this total, the value of small firm (fewer than 100 employees) exports was $1.16 billion or 4.5 percent and the value of medium sized firm (100-499 employees) exports was $1.98 billion or 7.7 percent. This results in a total of $3.14 billion or 12.2 percent for all firms with fewer than 500 employees. Firms with more than 500 employees accounted for $22.6 billion or 87.8 percent. Direct exports represent 70.5 percent of the exports of manufactured goods covered in the report.

As we know, many small firms do not export directly, but use brokers or other intermediaries. The Advocacy study estimates that small firms initiate at least half of the transactions through brokers. This estimate is based on a telephone survey of a sample of wholesalers and brokers. Based on these contacts, the researcher made a conservative estimate that 50 percent of wholesale and broker export transactions originate with small manufacturers. This estimate is not surprising given that small firms are more likely to be dependent on distribution outlets that can take advantage of economies of scale in marketing and distributing to foreign areas.

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Small business exports were of the highest value in the machinery, chemical and food products industries. The study also shows that the small business percentage share of exports was greatest in these five manufacturing major industry groups: leather and leather products (59.5 percent), miscellaneous manufactured products (49.8 percent), apparel and fabric products (45.1 percent), printing and publishing (33.3 percent), and lumber and wood products (27.6 percent).

This study suggests that small businesses may play a significant role in U.S. exports of manufactured goods. Markets such as Canada and Europe which present fewer cultural and language barriers for small firms are particularly important.

It is important to note that several factors make the EC an attractive U.S. market even today:

- English is a common spoken language in many EC countries.
- There is a well established distribution system, and a sophisticated financial system is in place.
- A network of U.S. government commercial officers is available throughout the Community.
- Many U.S. companies currently do business in the EC.
- There has been a significant decline in the dollar against European currency since early 1985.

For this reason, the Federal Government should focus on assisting small businesses in taking advantage of opportunities and avoiding the difficulties which may be created by a unified European market. The European Community will become a single internal market in which any company will be able to make sales freely throughout the member countries. If a product can be sold in one EC country, it can be sold in all.

The prospect of an EC free trade area should be of extreme interest to U.S. businesses already established in Europe as well as to those yet to enter that market. Preparations for the 1992 unified market should be made now, not after 1992. This could provide U.S. firms the advantage of new opportunities as the EC's internal barriers decrease and the avoidance of trouble if external barriers increase.

As great as the potential benefits from an EC single internal market may be, firms, nevertheless, should carefully examine all of the directives that will affect their businesses. At this time, it is still too early to determine if the internal market will be a truly open market. Product standardization may be implemented in such a way as to disadvantage or exclude U.S. competitors. Businesses should be critically aware of standardization changes and the effects they will have on business opportunities in the European Community.

Two other major concerns also have surfaced as the negotiations continue to establish a unified market by 1992. The first is the concept of reciprocity. Under this concept, the member states would require an identical regulatory environment in the U.S. before granting U.S. companies access to the unified EC market. Mentioned most often in relation to banking and financial services, this proposal, if expanded to trade and investment, could keep the EC's single market closed to third country competition. Second, transitory restrictions may be granted to certain member countries allowing them temporary protection from non-EC competitors and time to adjust to more open competition.

Currently, the consensus is that the EC single internal market will materialize, if not by 1992, then shortly thereafter. United States officials welcome the establishment of this increased trade liberalization and the potential opportunities for U.S. business interests. Yet, they are cautious of the possible protectionist barriers that might arise.

In preparing for 1992, U.S. firms should begin assessing potential EC markets now. If research uncovers an advantageous market, the firm should seriously consider establishing some form of business venture there before 1992, probably with a physical presence since the greatest benefits can be attained in this

manner while simultaneously reducing the risks of exclusion from possible, future external barriers. Establishing a subsidiary in the EC would be the safest option, although it also could be the costliest choice initially. European companies currently are making a strong push to align themselves with other firms to remain successful in the face of increased global competition. U.S. firms must realize this fact and adjust to this changing environment or risk being left behind.

Testimony of
Stephen Cooney
Director, International Investment and Finance
National Association of Manufacturers
on
The Implications of the European Community 1992 Plan
for
American Trade and Competitiveness
before the
House Committee on Small Business
February 9, 1989

EXECUTIVE SUMMARY

The plan to complete the opening of European Community internal market by 1992, known in shorthand as EC-92, promises to have major effects on U.S. industry. The overall view of U.S. industry is strongly positive. NAM members emphasize the positive impact of strong and dynamic growth, in an increasingly deregulated market.

Moreover, as indicated in our recent trade report, the E.C. market may be the strongest and most important one from the perspective of increasing exports. The fall in the dollar has led directly to a three-year boost in the level of U.S. exports to a 1988 annual rate that is $27 billion higher than in 1985. This has also meant a halving in our trade deficit with the E.C. from $25 billion to $12 billion, or over a third of the total improvement in the U.S. trade deficit.

Despite this generally positive outlook, U.S. industry does have a series of concerns regarding the outcome of specific issues in the EC-92 process, which could either enhance or reduce the opportunities for U.S. trade with the E.C. For small U.S. businesses, whose primary relationship with the E.C. market is through exports, the major issues are:

-- Harmonization of technical standards in accordance with the new approach providing for mutual recognition and equivalence.

-- New initiatives to require opening of E.C. member government public procurement to intra-E.C. trade partners, which also contain some discriminatory provisions against non-E.C. content goods.

-- The general effort to restrict non-E.C. trading partner benefits to strictly reciprocal market-opening relationships.

Other issues of overall importance to NAM, as indicated by a forthcoming NAM study on EC-92, are sectoral trade issues (especially in automobiles, telecommunications and information technology products), rules of origin and local content, changes in intellectual property protection rules, and initiatives regarding social affairs, competition and monetary policies.

TESTIMONY OF
STEPHEN COONEY
DIRECTOR, INTERNATIONAL INVESTMENT AND FINANCE
NATIONAL ASSOCIATION OF MANUFACTURERS

ON

THE IMPLICATIONS OF THE EUROPEAN COMMUNITY 1992 PLAN
FOR
AMERICAN TRADE AND COMPETITIVENESS

BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1989

Mr. Chairman, I am Stephen Cooney, Director of International Investment and Finance for the National Association of Manufacturers. NAM is a voluntary business association of over 13,500 manufacturing companies of all sizes, and their subsidiaries. Our members employ over 85 percent of all U.S. workers in manufacturing. They produce over 80 percent of the nation's manufactured goods and a similar share of the nation's total manufactured exports.

I am pleased to be invited to testify today regarding the European Community's program to complete the opening of its internal market by 1992, known in shorthand as EC-92. My comments are based on an intensive series of discussions with our member companies on this issue over the last year, both in the United States and in Europe. We have also received much helpful information from business associations here and in Europe -- notably from the industry groups that participate in the NAM Associations Council.

And we have had the opportunity to discuss these issues with members of the staff of the European Commission, with various departments of the U.S. government and with some E.C. member state governments.

What I would like to present here, Mr. Chairman, is a brief overview of EC-92, as seen by U.S. industry. I will focus particularly on the issues that may be most critical for smaller U.S. enterprises. These companies are chiefly involved in Europe as exporters, either directly or through sales to other U.S. companies. We are also presently preparing a comprehensive NAM report on our members' overall interests and concerns with EC-92. I would be pleased to provide the final version of that report for this committee, when it is completed in the near future.

The EC-92 Market Opportunity

My major overall point is that U.S. companies almost uniformly emphasize that EC-92 represents a major market opportunity. They see the proposed package as contributing both to a rapid expansion of the E.C. market and, in practice, a deregulation of that market which will increase opportunities for competitive producers. Within this overall positive outlook, however, there are a series of major policy issues, the outcome of which could either enhance or reduce business opportunities for U.S.-based exporters or U.S.-owned companies already established within the E.C.

Let's first look at the scale of the market opportunity. By the European Commission's calculations, enactment of the full 1992 program can give a one-time boost of 5 percent or more to the total E.C. domestic product. While U.S. exporters should seek markets

wherever they can find them, for the foreseeable future the E.C. may remain the key growth market overseas for U.S. industrial companies, especially if it becomes more dynamic and open.

Europe is our most important regional export market, and will remain so indefinitely. True, about the same shares (25 percent) of total U.S. exports go to Canada and the European Community. But a quarter of all U.S. exports to Canada are cars and parts involved in the two-way auto trade agreement. As for other countries and regions, Japan takes only 8 percent of our exports and the rest of East Asia another 13 percent. All of Latin America takes only 13 percent. And most importantly, no other regional market approaches the level of economic integration found in Europe today, much less what is being contemplated by 1992.

The E.C. is a critical market for many specific U.S. exports. In 1988, 46 percent of all U.S. exports of computers and parts have gone to the E.C. -- that's a projected total of over $10 billion in exports of that product to the European Community. The E.C. is also the largest market for U.S. electrical machinery and parts, a category that includes semiconductors. Total U.S. exports to the E.C. in 1988 may have hit $4.5 billion. The E.C. takes about a third of U.S: aircraft exports, with sales this year running over $6 billion at an annual rate. And in scientific and controlling instruments, where U.S. manufacturers maintain a strong trade surplus, 35 percent of all exports in 1988 went to the E.C.

The E.C. market has been the most important one so far in turning around the U.S. trade deficit. As noted in NAM's recently released comprehensive trade report, the fall of the dollar has had a bigger and faster impact on growth in exports to Europe than any

other region. U.S. export growth to Europe has been near or above double figures since 1985 and has been accelerating -- 9 percent in 1986, 14 percent in 1987 and an incredible 26 percent in the first half of 1988. Since 1985 the increase in our exports to the EC, from $49 billion to an annual rate of $76 billion in the first half of 1988, has been roughly equal to our total exports to Japan in 1987. It's as if we have suddenly found a new export market out there the size of Japan -- and one that is more willing to take U.S. goods. And this export growth in 1988 has cut the annual rate of the bilateral U.S. trade deficit with the E.C. in half: from $25 billion in 1987, to $12 billion in 1988. That improvement alone accounted for more than a third of the total improvement of the U.S. trade deficit in the first half of 1988.

Finally, let's look at investment. By definition, smaller companies may not be major investors. But about 30 percent of our total exports to the E.C. go directly to U.S. affiliates there. In manufacturing investment alone, total U.S. holdings in the E.C. were officially valued at $65 billion at the end of 1987. That's more than half the total value of U.S. companies' manufacturing investment abroad. It is more than double the amount in Canada, almost ten times the amount in Japan, four times the total for all Latin America and twelve times the total for all Asia outside Japan.

The 1992 Internal Market Program

I will not discuss in detail the 1992 program, because so much excellent and detailed information is available from the European Community itself, as well as from U.S. government sources. The basic thrust is to complete the internal market established as a

European objective by the Treaty of Rome over 30 years ago. As laid out in the E.C.'s 1985 "white paper," this involves the pragmatic elimination of three major types of barriers.

-- Physical barriers at the borders to the free flow of goods and persons;

-- Technical barriers that prevent goods produced or traded in one member state from being sold in others;

-- Fiscal barriers such as the red tape, delays and costs of different national tax systems which prevent cross-border trade.

Also associated with the elimination of these barriers are major initiatives in competition policy, encouragement of research and development, establishment of coordinated monetary policies with possible monetary union, and decisions on common social policies.

Three aspects of the overall package stand out from the point of view of U.S. business, I believe.

1) EC-92 is not designed, in itself, to promote trade with non-EC partners. It may have that effect, as European companies seek competitive products and commercial allies outside Europe as well as within. But as former European Commissioner Lord Cockfield, the primary architect of this program, emphasized in a meeting at NAM three years ago, "This program is not primarily for the benefit of our trading partners." I should also emphasize, however, that the E.C. has also maintained that it will respect all existing international obligations in developing and implementing EC-92.

2) EC-92 is being implemented today. The invitation to this hearing indicated that we should discuss the implications for U.S. business and the U.S. economy after 1992. But EC-92, which includes a list of 300 directives and other policy actions, is not like our recent Free Trade Agreement with Canada, that went into effect on a date certain -- January 1, 1989. The EC-92 program is going into effect continuously, as directives and regulations are enacted, with conforming actions by national legislatures, governments and standard-setting bodies.

3) The economic impact may be front-loaded. Companies in the E.C. have made and are making decisions right now regarding cross-border alliances and rationalization of production. This includes U.S. companies operating in the E.C. Therefore, some observers believe that the European Commission's economic analysis is misleading, when it predicts maximum benefit only in the mid-1990s after a period of initial restructuring and lost output. Major positive benefits may be felt earlier than expected. Both U.S. business and the U.S. government must be prepared to deal with the early impact of change.

A "Watch List" of Issues

As I emphasize above, our members generally view EC-92 as a positive development, that may already be revitalizing the European market. But there are specific developments and proposals that create some concern. Borrowing a concept from Michael Calingaert, our association is developing a "watch list" of EC-92 issues. These

are the specific EC-92 policy decision areas where U.S. companies in general feel that they may be most impacted. In the remainder of this testimony, I want to turn to the concerns on the NAM "watch list." The major issues on our general watch list right now are:

Technical Standards -- The harmonization of technical standards, which can have a major impact on current and future access of U.S. goods to the E.C. market.

Public Procurement -- The enhancement of existing E.C. rules on the opening of member government procurement and extension of E.C. rules to the sectors presently excluded from GATT or E.C. discipline.

Reciprocity -- The controversial stated E.C. policy of extending intra-E.C. market opening initiatives to non-E.C. producers only insofar as E.C. trading partners provide equivalent access to their markets for E.C. producers.

Sectoral Trade Issues -- We have particularly focused on the future development of E.C.-wide common commercial policies and other sectoral initiatives regarding automobiles, telecommunications and information technology, because of the broad implications of policies in these areas.

Rules of Origin and Local Content -- The development of E.C. rules that determine whether goods are of E.C. origin, for the application of specific trade benefits or penalties.

Intellectual Property -- Enhancement and completion of a Europe-wide system of protection of trademarks, patents and copyrights.

Social Dimensions -- The issue as to whether EC-92 should be accompanied by new initiatives in employment and social affairs, and what type of initiatives would be most effective under the EC-92 program.

Competition Policy -- Establishment of E.C.-level control over mergers and acquisitions, particularly large-scale multinational combinations.

Monetary Policy -- Elimination of all controls on capital movements within the E.C., establishment of mandatory coordination of monetary policies and possible creation of a single E.C. central bank and currency.

These are all important issues, with significant potential effects on U.S. companies and U.S.-E.C. relations. I would be pleased to discuss any of them in more detail at the request of the committee. However, in the balance of my statement, I will focus on the first three issues, because I believe that they may have the most impact on U.S. small business exporters to the E.C.

Technical Standards

One of the major components of the internal market is the elimination of differences in technical standards, that serve as barriers to intra-E.C. trade. This process may affect more U.S. companies than any other EC-92 issue.

The technical standards aspect of EC-92 can only be understood in view of the failures of previous efforts to eliminate internal market barriers by harmonizing national product standards. There were efforts to define specific EC-wide codes for goods on a product-by-product basis -- Euro-beer, Euro-bread, Euro-ice cream and so on. Progress was so slow, that it could not even keep pace with the development of new products in the dynamic European economy.

Then the European Court of Justice decided that member governments could not use their national standards as a basis for keeping out goods that were legitimately sold and consumed in other member countries. This decision -- the Cassis de Dijon decision -- meant that E.C. member countries had to accept some expeditious means of developing E.C.-wide minimum product standards. The alternative would be goods sold in their national markets that were produced under conflicting standards or no standard at all.

The principle of the new E.C. approach to standardization is that any product which can be sold in the member state in which it is produced will be freely marketable elsewhere in the E.C., unimpeded by diverse national standards or testing and certification procedures. The emphasis in this approach is on "mutual recognition and equivalence," as opposed to the negotiation of detailed manufacturing and process standards.

There are three main ways of introducing this new approach:

-- A 1983 directive prohibited member states from creating new technical standards that would serve as market barriers between E.C. countries;

-- A new expedited E.C. standardization procedure based on E.C. "framework" directives was formally agreed in 1985;

-- E.C. governments will be required to accept agreed guidelines for standards and procedures in testing laboratories.

How will the Community implement this approach? The framework directives may be relatively general. The key question will be how they are to be translated into specific product standards recognized and accepted across the E.C. And while the emphasis may be on mutual recognition and equivalence, these evolving E.C.-wide safety

and product standards can affect the manufacturing and application of covered products and may require substantial changes in manufacturing processes. This standardization process is not being undertaken by the European Commission itself or the member state governments, but by the Europe-wide private standards bodies, known by their French acronyms as CEN (for most manufactures) and CENELEC (for electrical products).

In principle, the adoption of common standards is widely seen by U.S. companies in Europe as a major benefit. U.S. companies with production facilities in Europe believe that they will be able to rationalize production across national frontiers to a much greater degree than at present. This process will be facilitated for companies heavily reliant on road transportation by accompanying liberalization of national rules related to domestic and international trucking. U.S. exporters may achieve comparable benefits. Whatever standard is adopted for a product, the potential U.S. exporter will be assured that complying with this standard provides access to the entire E.C. market.

But there are two major causes for concern among U.S. companies:

-- First, industries in some E.C. countries (Germany is the most frequently mentioned example) may push for "harmonization up" to a rigid and elaborate existing national standard. Such a development would disadvantage both producers in other E.C. countries and exports to the E.C. from non-E.C. sources.

-- Second, proposed testing and laboratory certification rules, according to a recent draft of a Commission policy proposal, could virtually eliminate self-certification by manufacturers

outside the E.C. and make third party testing by non-E.C. laboratories virtually impossible. Few products are now covered by mutual recognition of laboratory testing standards, and existing draft proposals for a new E.C. system could lead to expensive modifications or costly and time-consuming new testing practices for products that U.S. companies wish to ship to the E.C.

The best remedy for this problem would probably be access for U.S. companies to the CEN/CENELEC process. This process, however, has been criticized as not being very open or transparent. Smaller companies who are not producers in Europe are not allowed to participate directly in the E.C. national standards bodies that cooperate in CEN/CENELEC. For these companies it will be critical to identify current or potential E.C. distributors who can serve as effective supporters of the U.S. company's position.

The E.C. does require CEN/CENELEC to adopt existing International Standards Organization (ISO) standards where they exist and are appropriate. U.S. companies should insure that they are familiar with ISO standards and are prepared to implement them for products sold in Europe. But it should also be recognized that relatively few ISO standards have been developed in many product areas. Also, all draft CEN/CENELEC standards and specifications are to be circulated to the American National Standards Institute (ANSI) before final adoption. Concerned U.S. companies should contact ANSI for information on proposed product standards of relevance to them. U.S. companies should indicate to both their E.C. contacts and U.S. government contacts if such notice is not timely enough to allow for U.S. reaction and comment.

Finally, through the industry sector advisory committees and other U.S. government-business channels, there needs to be a continuous dialogue on both E.C. policies and specific product proposals that appear to be developing as effective barriers to trade. The E.C. is a signatory of the GATT standards code, and has stated its intention to adhere fully to existing international obligations.

Public Procurement

The European Commission's determination to open national governments' public sector procurement to intra-E.C. competition is another major feature of EC-92. This process is effectively to be completed in two steps.

First, existing directives on public works and public supply contracts are being strengthened. The bidding process in each E.C. member state must be made completely transparent. Single-bid or no-bid public contracts without adequate public notice are to be eliminated. Since manufactured products in many of these areas are also covered by GATT public procurement rules, there should be no allowance of discrimination against U.S. producers, if E.C. policy succeeds in making the process more open.

Second, the E.C. is attempting to extend its regime over public procurement to the sectors currently excluded from both GATT and E.C. rules -- telecommunications, water, energy and transport. The most important point for U.S. companies is that the proposed new rules create no new rights of access for products made outside the E.C. To determine whether a product is covered by these proposed new rules, the draft European Commission proposals suggest a 50 percent E.C.-content test. And if two bids are within 3 percent, an

E.C. member government must discriminate against a bid which is not at least 50 percent E.C. content. It should be pointed out here that this margin of preference is at least substantially smaller than that provided in various U.S. "Buy American" provisions in public procurement.

In developing these rules, the E.C. has directly indicated that they are willing to consider open access on a multilateral basis, through negotiations under the GATT procurement code. The view expressed by many of our members to date is that while they are not pleased with the local content rules included in the proposals regarding public procurement in the presently excluded sectors, the principle of opening these markets within the E.C. and the willingness to negotiate the opening of these sectors to other signatories of the GATT procurement code are steps forward.

Reciprocity

The subject of reciprocity has now been broached in the previous sections of this testimony. No issue has been of greater concern to the U.S. public regarding EC-92 than the question of reciprocity and whether the E.C. is seeking to construct a "Fortress Europe." In recent months, the outgoing E.C. Trade Commissioner, Willy de Clerq, has stated several times that any opening of the E.C. market to foreign firms would have to be matched by reciprocity in their markets for E.C.-based companies. These remarks contributed to a high level of international concern that the internal market meant that the E.C. was retreating into a "Fortress Europe." Foreign access would only be granted on the basis of specifically negotiated bilateral reciprocal agreements.

Then, in an important statement issued on October 19, 1988, the Commission sought to define more clearly its position on the general question of reciprocity and related specific issues. The Commission took the unusual step of publicly declaring the outcome of an internal "policy debate" within the Commission itself in this statement, entitled Europe 1992: Europe World Partner. The statement sought to reassure trading partners that "1992 Europe will not be a fortress Europe but a partnership Europe."

The October statement on reciprocity has helped reassure U.S. companies presently operating in Europe that they will not be the target of a general "Fortress Europe" policy, which uses U.S. companies in the E.C. as hostages to insure access for the E.C. on totally equal terms in the U.S. market. The rights of existing investors, as traditionally interpreted under Article 58 of the Treaty of Rome, are to be respected. But the statement is not a blanket endorsement of the national treatment principle, which means treatment of foreign-owned enterprises on the same basis as domestically-owned companies and in conformity with international law.

The E.C. has thus not abandoned its general philosophy of reciprocity as an approach to solving the problem of how to ensure that producers in the E.C. are the primary beneficiaries of EC-92. The Commission said in the October statement that "It would be premature to grant non-member countries automatic and unilateral access to the benefits of the E.C. liberalization process" before new international agreements on trade liberalization and open access exist.

The E.C. statement defines reciprocal access in a qualified way as the general existence of fair and "comparable" market access, not mirror market-opening legislation. There would appear, for example, to be leeway for accepting that U.S. state regulations against interstate banking should not be used to bar U.S.-owned banks from acquiring branches across national boundaries in the E.C., as long as the E.C. rules were applied in the same manner to domestic and foreign-controlled banks.

On the other hand, the E.C. would not extend non-discriminatory or national treatment to companies in cases where the non-E.C. host government does not provide equivalent non-discriminatory access. For example, blatant discrimination in the United States against foreign suppliers through such laws as the Buy American Act would mean that U.S. exporters could not fully participate in the opening of the E.C. public procurement market.

The October 19 statement added a number of important clarifications under the heading of "specific aspects" of application of the policy. Probably the most important for U.S. small businesses regarded the extension of national quotas and other market restrictions to the E.C. level. In creating or replacing existing national measures with an E.C.-wide system, the Commission stated, "These measures will not result in a higher level of protection than at present." It is certainly in our interest, at a minimum, to see that this commitment is not violated.

Final Comments

In conclusion, I would like to add one general point about EC-92, that I think people have lost sight of in the furor over "Fortress Europe." The EC-92 is not a monolith. There are many different national and commercial interests represented in every aspect of this program. There is also an institutionalized conflict between the central organs of the Community, especially the European Commission, and specific member governments that may wish to protect specific industries or regions, for all the usual political, social and economic reasons. The story of this process will be in the details. The ultimate question is how effectively both the U.S. private sector and the U.S. government can track the detailed implementation of the program, and make our views and interests known in a timely and effective manner.

National Association
of Manufacturers

International Economic Affairs

March 3, 1989

The Honorable John LaFalce
Chairman
Committee on Small Business
2367 Rayburn
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the National Association of Manufacturers I appreciate the opportunity of testifying on February 9 before your committee on the subject of EC-92.

The full NAM report on EC-92 and U.S. Industry is being released today. As I promised, I am sending you a copy for your records.

We look forward to working with your committee in the future.

Yours sincerely,

Stephen Cooney
Director, International Investment
and Finance

SC/dec

Enclosure

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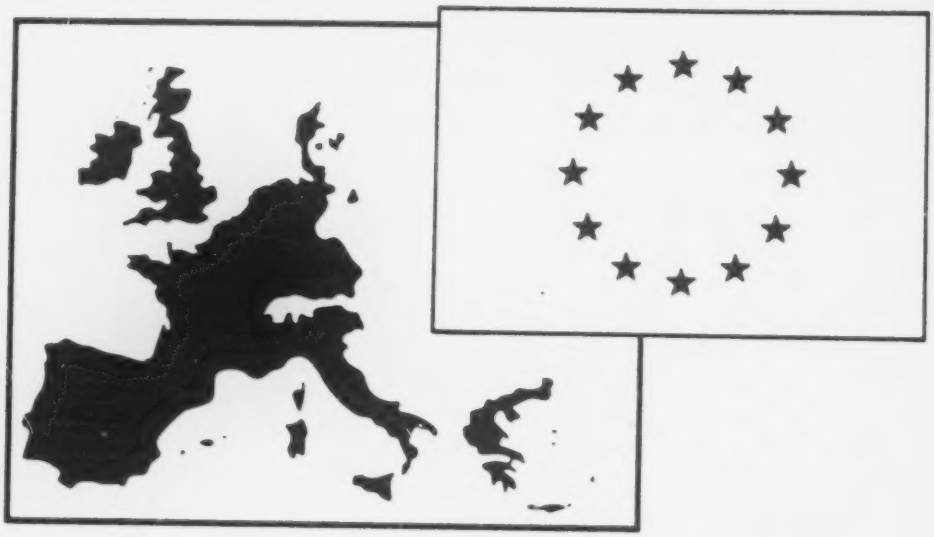
EC-92 and U.S. Industry



An NAM Report on the Major Issues for U.S. Manufacturers in the European Community's Internal Market Program

by Stephen Cooney
Director, International Investment and Finance

National Association of Manufacturers
February 1989

The National Association of Manufacturers is a voluntary business association representing approximately 13,000 member companies and subsidiaries—large and small—located in every state. Members range in size from the very large to the more than 9,000 smaller manufacturing firms, each with fewer than 500 employees. NAM member companies employ 85 percent of all workers in manufacturing and produce more than 80 percent of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its Associations Council and the National Industrial Council.

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FOREWORD

Over the past year, a new buzzword -- EC-92 -- has sprung up in our vocabulary. EC-92, of course, refers to the plans of the European Community to eliminate barriers to the completion of the E.C.-wide internal market by 1992. While the buzzword may be new, the work in the European Community to achieve this goal has been going on since 1985.

For U.S. manufacturers exporting to and operating in Europe, EC-92 is an extremely important issue. U.S. exports to the EC amount to $80 billion and intra-EC sales of U.S. firms in Europe total $550 billion annually. Two-thirds of the non-communist world's GNP is accounted for by the economies of the E.C. and the United States. What goes on within the E.C. market, therefore, has an important bearing on the interests of the rest of the world.

While NAM has been following this issue since 1985, it was not clear to us exactly how the interests of the American manufacturing community were affected by EC-92, despite the rather extensive amount of recent press coverage. We decided, therefore, to conduct an extensive series of discussions and interviews with government and corporate officials on both sides of the Atlantic with the aim of producing a report on what EC-92 means to the American manufacturing community. Stephen Cooney, Director for International Investment and Finance at NAM, has been in charge of this work over the past six months and the results of his efforts follow.

This report is intended to help identify the important issues for American manufacturers in EC-92. It is designed as an information document and not as an NAM policy statement. Development of NAM policy positions on specific EC-92 issues will be coordinated by an NAM Task Force on EC-92, chaired by Glen J. Skovholt, Director, Policy and Strategy for Corporate Public Affairs, Honeywell Inc.

We would encourage any comments and analysis on this NAM report and we would be glad to answer questions or hear comments about how EC-92 affects American manufacturing interests.

Howard Lewis III
Vice President, International
Economic Affairs
National Association of Manufacturers

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SUMMARY OF CONTENTS

Page

Foreword i

Executive Summary 2

Introduction 6
Organization of This Report 7

I. Evolution of EC-92 and U.S. Industry
What Is at Stake for U.S. Industry? 8
The E.C. Internal Market Program 9
Prospects for Completing EC-92 11
The Process of Adopting EC-92 Policies 12

II. Major Issues for U.S. Companies in EC-92
1) Technical and Environmental Standards 15
2) Public Procurement 20
3) Reciprocity 24
4) Sectoral Issues 27
5) Rules of Origin and Local Content 33
6) Intellectual Property 35
7) Social Dimension 37
8) Competition Policy 40
9) Monetary Policy 42
10) Other Potential Issues 44
-- Export Controls
-- Defense Procurement

Appendix I
Members of the Commission and Their Responsibilities 45

Appendix II
Qualified Majority Voting in the Council of Ministers 48

Appendix III
Reprint of article by Patrick W. Cook and 49
Donald R. Mackay, "The New EC Approach to Harmonization of Standards and Certification", Business America, August 1, 1988.

Appendix IV
Sources of Further Information 51

EC-92 AND U.S. INDUSTRY

EXECUTIVE SUMMARY

The plan to complete the opening of European Community internal market by 1992, known in shorthand as EC-92, promises to have major effects on U.S. industry. The overall view of U.S. industry is strongly positive. NAM members emphasize the positive impact of strong and dynamic growth, in an increasingly deregulated market.

This report aims to provide guidance for NAM members on the changing European business environment. It focuses on the specific issues and proposals related to EC-92 that have been identified as being of most concern to U.S. industry, rather than the overall history, politics and economics of the E.C. internal market program. The report is based on extensive consultations by the author with NAM member firms in the United States and Europe, cooperating business associations, and information provided by representatives of the U.S. government, staff of the European Commission in Brussels and officials of E.C. member-state governments and private trade associations.

This report is divided into two parts:

Part I: Evolution of EC-92 and U.S. Industry is an overview of both the interests of U.S. industry in EC-92 and the development of the EC-92 program. The major subjects of this part of the report are as follows.

What Is at Stake for U.S. Industry?

As indicated in NAM's recent comprehensive trade report, the E.C. may be the strongest and most important market from the perspective of increasing U.S. exports. The fall in the dollar, improved E.C. growth rates and the relatively open E.C. market has led directly to a three-year boost in the level of U.S. exports. The 1988 level was $27 billion higher than in 1985. This has also meant reducing our trade deficit with the E.C. from $24 billion to $12 billion, accounting for over a third of the total $33 billion improvement in the U.S. trade deficit in 1988. Moreover, the E.C. is far and away the most important host for U.S. manufacturing investment abroad -- at $65 billion, more than half the worldwide total.

The E.C. Internal Market Program

The basic thrust of EC-92 is to complete the internal market established as a European objective by the Treaty of Rome over 30 years ago. As laid out in the E.C.'s 1985 "white paper," this involves the pragmatic elimination of three major types of barriers.

- **Physical barriers** at the borders to the free flow of goods and persons;

- **Technical barriers** that prevent goods produced or traded in one member state from being sold in others;

-- **Fiscal barriers** such as the red tape, delays and costs of different national tax systems which prevent cross-border trade.

Also associated with the elimination of these barriers are major initiatives in related areas, including competition policy, encouragement of research and development, establishment of coordinated monetary policies with possible monetary union, and decisions on common social policies.

Prospects for Completing EC-92 and the Process of Adopting EC-92 Policies

The first part of the report reviews the major issues involved in the completion of the ambitious EC-92 program. It notes that whatever the outcome of these politically sensitive questions, which could prevent the goals of the 1985 White Paper from being fully achieved, many directives and policies related to 1992 will go into effect as they are approved by the E.C. The reappointment of President Jacques Delors for a second term as President of the European Commission, beginning in January 1989, indicates the strong commitment of E.C. member states to achievement of the internal market goal. During the term of the new commission, which ends on December 31, 1992, the conditions for U.S. companies of doing business in the E.C. will be changed in a major and irrevocable way.

The first part of the paper concludes with an analysis of how EC-92 policies are developed and adopted within the E.C. institutional framework. It also summarizes the ways in which U.S. companies can seek access to provide and receive information on how the process may affect their interests.

Part II: Major Issues for U.S. Companies in EC-92 reviews the major issues that could either enhance or reduce the opportunities for U.S. companies as investors in or exporters to the E.C. These major issues represent the subsections of Part II of the report. Within each subsection, the report analyzes the principal relevant proposals of the EC-92 program that have been adopted or considered to date.

1) **Technical and Environmental Standards** -- The harmonization of technical standards, a major part of EC-92, can have a major impact on current and future access of goods produced by U.S. companies for the E.C. market. The expedited adoption of common E.C. standards is widely seen by U.S. companies as a major benefit. However, there are serious concerns regarding timely and adequate access to standards information through the voluntary E.C. "CEN/CENELEC" standards-setting process. Also, U.S. companies have concerns regarding the implementation of E.C. certification and testing recognition procedures.

2) **Public Procurement** -- The enhancement of existing E.C. rules on the opening of member government procurement and the extension of E.C. rules to the sectors presently excluded from GATT or E.C. discipline are designed to increase dramatically cross-border procurement within the E.C. The new rules, at least in the previously excluded sectors, will not necessarily apply to non-E.C. source products. But the E.C. has indicated a willingness to consider open access on a reciprocal basis, either bilaterally or multilaterally.

NAM members have indicated concern with the new local content rules included in the proposals regarding procurement in the presently excluded sectors, but are encouraged by the principle of opening these markets within the E.C. and the commitment to negotiating opening of these sectors to other signatories of the GATT procurement code.

3) **Reciprocity** -- The controversial stated E.C. policy of extending intra-E.C. market opening initiatives to non-E.C. producers only insofar as E.C. trading partners provide equivalent access to their markets for E.C. producers has led to great public concern with the emergence of a "Fortress Europe" in world trade. The October 1988 Commission statement on the definition of reciprocity has alleviated some U.S. industry concerns regarding this subject.

4) **Sectoral Trade Issues** -- This report particularly focuses on the future development of E.C.-wide common commercial policies and other sectoral initiatives regarding automobiles, telecommunications and information technology, because of the broader implications of policies in these areas.

5) **Rules of Origin and Local Content** -- U.S. industry is strongly concerned with the development of E.C. rules that determine whether goods are of E.C. origin, not only for the application of specific trade benefits or penalties, but also on a more general basis regarding the treatment and access of foreign companies or producers in the E.C. market.

6) **Intellectual Property** -- Enhancement and completion of a Europe-wide system of protection of trademarks, patents and copyrights is a process that pre-dates EC-92. But it has been stimulated by plans to create a more integrated market. Generally, U.S. companies are supportive of proposals to allow registration in one member country to be valid for the whole Community, as well as to broaden the products that are covered by E.C.-wide copyright rules. There are concerns, however, with some proposed reform procedures.

7) **Social Dimension** -- The increase in unemployment in the E.C. between the early 1970s and the 1980s has been a major stimulus for the acceptance of the EC-92 program. The "social dimension" of EC-92 includes new initiatives in employment and social affairs related to the creation of a more integrated E.C. market. Both U.S. companies and E.C. industry generally have been supportive of proposals aimed at establishing E.C.-wide safety standards, reducing regional disparities, improving worker training and enhancing labor mobility. Concerns have been expressed over other initiatives, that would have the effect of establishing more rigid E.C.-wide industrial relations policies and practices.

8) **Competition Policy** -- Establishment of E.C.-level control over mergers and acquisitions, particularly large-scale multinational combinations, is seen by U.S. companies as potentially providing an expedited means of increasing E.C.-wide competition, while producing substantial gains for the E.C. through improved economies of scale.

9) **Monetary Policy** -- The E.C. has already agreed on the elimination of all controls on capital movements within the E.C. Currently under consideration are the establishment of mandatory coordination of monetary policies and possible creation of a single E.C. central

bank and currency. These policies not only enhance the ability of U.S. companies to operate within the E.C. framework, but may also have a major impact on the E.C.'s international competitive status.

10) Potential Issues -- The report concludes by noting two other issues not now included in the EC-92 program, but which may have a major effect on U.S. companies when they are considered by the E.C. in the future. These are future rules regarding the opening of defense procurement within the E.C. and the adoption of common E.C.-wide export control policies.

EC-92 AND U.S. INDUSTRY

An NAM Report on the Major Issues for U.S. Manufacturers in the European Community's Internal Market Program

by
Stephen Cooney
Director, International Investment and Finance
National Association of Manufacturers

February 1989

INTRODUCTION

There is no hotter subject among U.S. business leaders than the proposal to eliminate the European Community's remaining internal market barriers by 1992. Virtually every U.S. industry and major company now is trying to understand what "EC-92" means for them and for their world marketing strategies.

At this point, U.S. companies almost uniformly emphasize that EC-92 represents a major market opportunity. They see the proposed package as contributing both to a rapid expansion of the E.C. market and, in practice, to a deregulation of that market which will increase opportunities for competitive producers. Within this overall positive outlook, however, there are a series of major policy issues, the outcome of which could either enhance or reduce business opportunities for U.S.-based exporters or U.S.-owned companies already established within the E.C.

This report aims to provide guidance for NAM members on the changing European business environment. It focuses on the specific issues and proposals related to EC-92 that have been identified as being of most concern to U.S. industry, rather than the overall history, politics and economics of the E.C. internal market program. The report is based on extensive consultations by the author with NAM member firms in the United States and Europe, as well as cooperating business associations. The firms consulted in Europe include European as well as American-owned enterprises. The report is also based on information provided by representatives of the U.S. government, staff of the European Commission in Brussels and officials of E.C. member-state governments and private trade associations. The report is not a formal NAM policy statement on EC-92 issues, though it may indicate those issues in EC-92 on which NAM policy may later be developed.

The following issues are those that have been identified as being of greatest importance to American industrial exporters and investors doing business in the E.C. Each is given a separate detailed section in Part II of the report, where the most critical specific proposals and policy choices are discussed.

1) Technical and Environmental Standards
2) Public Procurement
3) Reciprocity
4) Sectoral Issues
5) Rules of Origin and Local Content
6) Intellectual Property
7) Social Dimension
8) Competition Policy
9) Monetary Policy
10) Other Potential Issues

This report refers to many texts of specific documents and policy proposals related to these issues. Precise references are provided in the report for the use of members who wish to follow up on issues in more detail. In many cases these proposals will evolve as they move through the E.C. policy process. Listed at the end of the report are some contacts in the United States and Europe which are good sources of information for U.S. companies as they seek information on the issues of most importance to them.

Organization of this Report

This report is written in two parts. The first part is a general orientation for the business reader. It summarizes the importance of the E.C. market for U.S. business, then briefly describes the development of the EC-92 proposal and the policy processes of the European Community as amended by the Single European Act of 1987 (SEA). This latter constitutional change is so named because the E.C. member states used one negotiated instrument to amend the basic European Coal and Steel Community and Euratom treaties, as well as the Treaty of Rome that established the Common Market.

The second part of the report is based on a "watch list" of major EC-92 policy issues, whose development will be critical for the future role of U.S. business in Europe. These are not necessarily the most important or visible EC-92 issues from the member states' own political and economic perspectives, but may be the ones with the most impact on U.S. business and manufacturing interests. Accordingly, this is the range of issues which will receive most attention from NAM during the evolution of EC-92.

I. THE EVOLUTION OF EC-92 AND U.S. INDUSTRY

What Is at Stake for U.S. Industry?

Many commentators in recent years have criticized U.S. business for being too "Euro-centric," too focused on traditional and slow-growing markets in western Europe. We have been told that the future, high-growth markets are in such areas as the Pacific Basin, Latin America and other less-developed economic regions, or even the major Communist countries. These analyses underestimate the dynamism, openness and growth possibilities that remain in Europe. While U.S. exporters should seek markets wherever they can find them, for the foreseeable future the E.C. may remain the key growth market overseas for U.S. industrial companies.

Europe is our most important regional export market, and will remain so indefinitely. The value of U.S. exports to the European Community is about a quarter of total exports, a little higher then the share going to Canada. But a quarter of all U.S. exports to Canada are cars and parts involved in the two-way auto trade agreement. As for other countries and regions, Japan takes only 8 percent of our exports and the rest of East Asia another 13 percent. All of Latin America takes only 13 percent. And most importantly, no other regional market approaches the level of economic integration found in Europe today, much less what is being contemplated by 1992.

The E.C. is a critical market for many specific U.S. exports. In 1988, 46 percent of all U.S. exports of computers and parts have gone to the E.C. -- that's a projected total of over $10 billion in exports of that product to the European Community. The E.C. is also the largest market for U.S. electrical machinery and parts, a category that includes semiconductors. Total U.S. exports to the E.C. in 1988 may have hit $4.5 billion. The E.C. takes about a third of U.S. aircraft exports, with sales this year running over $6 billion at an annual rate. And in scientific and controlling instruments, where U.S. manufacturers maintain a strong trade surplus, 35 percent of all exports in 1988 went to the E.C.

The E.C. market has been the most important one so far in turning around the U.S. trade deficit. The fall of the dollar has had a bigger and faster impact on growth in exports to Europe than any other region. U.S. export growth to Europe has been near or above double figures since 1985 and has been accelerating -- 9 percent in 1986, 14 percent in 1987 and an incredible 25 percent in 1988. Since 1985 the increase in our exports to the EC, from $49 billion to $76 billion in 1988, has been roughly equal to our total exports to Japan in 1987. It's as if we have suddenly found a new export market out there the size of Japan. This export growth in 1988 cut the annual rate of the bilateral U.S. trade deficit with the E.C. in half: from $24 billion in 1987, to $12 billion in 1988. That change alone accounted for more than a third of the total improvement of the U.S. trade deficit in 1988.

Finally, let's look at investment. The total U.S. direct investment stake in the European Community is nearly $125 billion, according to official statistics. In manufacturing investment alone, total U.S. holdings in the E.C. were valued at $65 billion

at the end of 1987 -- more than half the total value of U.S. companies' manufacturing investment abroad. It is more than double the amount in Canada, almost ten times the amount in Japan, four times the total for all Latin America and twelve times the total for all Asia outside Japan.

The E.C. Internal Market Program

Anything that affects U.S. economic interests on this scale is obviously of critical importance to U.S. industry and to the U.S. economy more generally. The E.C. internal market proposal -- the goal of completing the internal E.C. market and removing all intra-E.C. trade barriers by 1992 -- is probably the most important policy initiative taken within the European Community since the founding of the Common Market in 1957. This explains the extraordinary interest of U.S. business in this initiative.

It is the very failure to complete the common market as originally envisioned that has led to the development of EC-92. For example, as one American executive with extensive experience in the E.C. has explained, "On January 1, 1958, the original six members of the Common Market took down their signs at the internal borders that said 'Customs.' Then they put up new signs that said 'Taxes.'"

What he means is that differences in internal national regulations -- and not just taxes, but in other areas like technical standards and public procurement policies -- have circumscribed the benefits of a truly open and free market among the Common Market's members. As the European Community doubled in members, this problem has not become any simpler to resolve. Cross-border controls remain in place for a plethora of reasons. According to the European Commission's official study, summarized in the report The European Challenge - 1992 by Paolo Cecchini, the resulting "cost of non-Europe" may equal 3 to 6 percent of Europe's gross domestic product, or a total of $250 billion annually.

These costs were tolerable in the 1950s and '60s as the European economies boomed. There was visible progress in the initial elimination of national tariff barriers within Europe. American companies contributed to this progress by investing heavily and by bringing in their expertise in operating across a wide range of regional markets. But the initial momentum and optimism faded in the 1970s, with the energy and unemployment crises in Europe, a major growth slowdown, stagflation and the European version of the U.S. "malaise" of the late 1970s: "Eurosclerosis."

The proposal to establish a fully open internal market by 1992 is designed to sweep away the de facto obstructions to free trade within Europe. To understand the genesis of the proposal, which dates from 1985, it is necessary to understand the failures of previous efforts to eliminate internal market barriers by harmonizing national product standards and other policies. There were efforts to define specific E.C.-wide codes for goods on a product-by-product basis -- Euro-beer, Euro-bread, Euro-ice cream and so on. Progress was so slow, that it could not even keep pace with the development of new products in the dynamic European economy.

Finally, in a landmark decision the European Court of Justice declared that member governments could not use their national standards and regulations as a basis for keeping

out goods that were legitimately sold and consumed in other member countries. This decision -- the Cassis de Dijon decision -- meant that E.C. member countries had to accept some expeditious means of developing E.C.-wide minimum product standards. The alternative would be goods sold in their national markets that were produced under conflicting standards or even no standard at all.

Another impetus behind EC-92 was world competitiveness. The goal of a "United States of Europe," going all the way back to Jean Monnet, the father of the European idea, was always outward-looking as well as inward-looking. Monnet wanted Europe to be a power in world economic and political affairs. By the early 1980s, it had become clear that market barriers within Europe were inhibiting the development of economies of scale sufficient to make European-based enterprises competitive in the world economy.

We also cannot forget the employment question as a major impetus for change. Unemployment rates in Europe mounted and remained stubbornly high in the early 1980s. From essentially full employment, or even "negative unemployment" in some E.C. member countries around 1970, the total estimated E.C. unemployment rate rose through the 1970s and reached double digits, 10.5 percent, in 1983. Since then, it has not appreciably fallen. It became increasingly clear to E.C. members that it was necessary to add a new structural dynamic at the Europe-wide level, and that addressing the unemployment problem solely at the national level of structural adjustment provided an insufficient solution to national unemployment problems.

The Cecchini report estimates that the total growth in E.C. GDP as a result of elimination of internal market barriers would directly create 1.8 million new jobs. This would not solve the E.C. unemployment problem, though it would at least reduce unemployment by an estimated 1.5 percent, allowing for some initial job losses due to restructuring. More importantly, as with world competitiveness, there was a perceived need to create a solution to the unemployment problem that was on a greater scale than provided within the individual member country economies. This need was compounded by the great disparities in regional development within the E.C., especially after the addition of the three lower-income Mediterranean countries in 1981-86.

In 1985 the recently-appointed European Commissioner for the Internal Market, Lord Cockfield of the United Kingdom, produced a remarkable new proposal which has revitalized the European Community. Backed by the recent decision of the European Court of Justice, the Cockfield "White Paper" proposed a target list of about 300 directives and other policy actions, aimed at eliminating effective barriers to the internal market. Taken together, these directives would:

-- Eliminate all remaining physical barriers to the movement of persons and goods within the E.C.;

-- Eliminate differences in national technical standards as barriers to the free movement of goods;

-- Eliminate national differences in indirect tax rates as a trade barrier.

Moreover, Lord Cockfield insisted that the package was a package. It had to be achieved by a date certain -- 1992 -- or the whole process would be blocked by each member-state picking the benefits they wanted, and dragging their feet on the rest. Cockfield's program was both encouraged and fully backed by the European Commission President, Jacques Delors, who has made EC-92 his top priority. In addition, the Single European Act (SEA), specifically approved to expedite completion of the internal market, established that most internal market directives would be adopted by qualified majorities. No one member government could block directives by withholding its consent.

Prospects for Completing EC-92

EC-92 is a moving target. But this is a good halfway point at which to assess developments. Nearly half of the proposed list of directives in the 1985 White Paper have already been adopted or advanced to the final stages of approval. Due to differences with Prime Minister Margaret Thatcher over the speed of certain aspects of EC-92, Lord Cockfield has not been re-nominated to the Commission by the British government. But the reappointment of Delors as President, for the new term starting in 1989, signifies that the process will continue, with the support of the E.C. member states.

The most serious political obstacles to achievement of the EC-92 package do not necessarily involve the most salient operational issues for U.S. companies. This is important for NAM members to remember as they follow the progress of the EC-92 program. Perhaps the most difficult decisions that the E.C. will have to make on the EC-92 agenda involve U.S. interests and U.S.-E.C. economic relations only indirectly, insofar as U.S. companies and the U.S. economy as a whole have a major stake in the successful completion of the EC-92 program. Such issues include:

-- Harmonization of VAT rates;

-- Complete elimination of frontier controls on movement of persons within the E.C.;

-- Monetary policy harmonization, including the possible establishment of an E.C. central bank and single currency.

Whatever the outcome of these politically sensitive questions, which could prevent the goals of the 1985 White Paper from being fully achieved, other directives and policies related to 1992 will go into effect as they are approved by the E.C. In this sense, Lord Cockfield's admonition that EC-92 must be achieved as a complete package is misleading: those parts of the package that attain final approval will immediately begin to affect how business is done in Europe. Moreover, some European economists dispute the conclusions of the Cecchini study regarding patterns of growth. The study predicts some loss of economic growth due to restructuring problems as EC-92 begins to affect E.C. economies, followed by large gains in the mid-1990s. But other economists see more "front-loaded" growth due to new efficiencies as parts of the EC-92 package enter into effect.

On January 1, 1989, a new Commission took office in Brussels. President Delors was reappointed, but there were many important changes in the other portfolios (an updated

list of the Commissioners is provided in an appendix to this report). U.S. companies should at least anticipate that a large part of the total EC-92 package will be in place by the end of this Commission's mandate in four years. During this period, the conditions for U.S. companies of doing business in the E.C. will be changed in a major and irrevocable way.

The Process of Adopting EC-92 Policies

Before analyzing in detail the major issues of EC-92 for U.S. companies, it is important that the reader have a general familiarity with European Community terms and institutions. Moreover, the fundamental relationship of the member states and organs of the E.C. has been altered by adoption of the SEA in 1987, specifically to enhance completion of the internal market. General background knowledge of the institutional relationships within the E.C. is necessary for determining the most appropriate points in the process for U.S. companies to raise questions or concerns regarding specific EC-92 proposals.

Most of the Internal Market legislative work will be carried out by three E.C. institutions: the European Commission, the Council of Ministers, and the European Parliament. These three institutions are responsible for proposing, debating and adopting Community legislation. In addition, the European Court of Justice decides on the legality of challenged E.C. legislative measures.

The **Commission** is responsible for formulating and proposing legislation and providing for the administration of Community policies. The Commission is led by 17 Commissioners (two each from France, the Federal Republic of Germany, Italy, Spain, and the United Kingdom, and one from each of the other member states.)

The Commissioners and their staff draft all Community legislative proposals and policy statements. Each Commissioner is responsible for one or more areas of Community policy, such as economic affairs, agriculture, environment and energy. The staff of the Commission are organized into directorates-general (DGs) -- there are 22 DGs at present, and they do not correspond exactly to the portfolios held by individual commissioners (see list in Appendix 1). The Commissioner responsible for the Internal Market program in the new Commission is Martin Bangemann, formerly Economics Minister of Germany. DG III is the directorate responsible for many internal market policies, but other directorates also have relevant areas of authority.

Once E.C. legislation is adopted, the Commission is responsible for implementation. If legislation is adopted in the form of a regulation, it immediately becomes law in the member state. However, most EC-92 policies are cast in the form of directives, which means that each member government must pass or have previously established national legislation conforming to the general terms of the E.C. policy. The Commission is also the executive body responsible for negotiations with non-E.C. countries and organizations in areas where member states have ceded authority to the E.C. -- notably trade policy. These contacts are handled primarily through DG I (External Relations), though other directorates are involved in some specific functional issues.

The **Council of Ministers** is the decision-making body of the Community and must approve all Community legislation. It is the only Community organization whose members act as representatives of the individual E.C. member state governments. Member governments are represented at Council meetings by the national minister who has responsibility for the subject under discussion. The presidency of the Council rotates every six months, in accordance with the "E.C. alphabet:" the alphabetical order of member state names in their respective national languages. Thus, Germany (Deutschland) and Greece (Ellas) chaired the Council in 1988, to be followed by Spain (Espana) and France in 1989. This rotation is quite important, because the national government's own priorities can heavily influence the Council agenda during its presidency.

Formerly, the Council could only take decisions on most important matters by unanimous agreement. The SEA has amended the Treaty of Rome to allow Council approval on most internal market proposals by "qualified majority" voting. This change may prove extremely important to U.S. companies, who will no longer be able to rely on one country to block changes that may disadvantage them and who correspondingly may be less concerned about individual countries that oppose favorable internal market reforms. Appendix II explains the qualified majority voting rules. Note that not even two large countries voting together or any combination of one large country and two small ones can block an internal market proposal. In certain areas, such as 1992 measures, the Council must also formally consult with the European Parliament and the Economic and Social Committee.

The **European Parliament** (EP) is comprised of 518 members, directly elected by the voters in each of the member states, roughly in proportion to the member state's population. The Members of the European Parliament (MEPs) sit in nine political party groupings, such as the Socialist Group or the European People's Party, rather than in national groups. At present, the Socialists have the largest single voting bloc within the EP, augmented by a substantial number of Communist MEPs and members of other left-wing groups. Since 1979, the EP has been directly elected by voters in the member states. The next EP election is set for this year.

The EP advises the Commission and the Council on legislative proposals before any legislation is adopted. It also exercises a measure of democratic control over the Commission and the Council through its right to amend or delay legislation. This power has been increased under the SEA, especially with regard to EC-92 issues. Specifically, the EP may amend Commission proposals, then reapprove their amended version by a two-thirds majority, if the Commission does not accept the EP amendments. The Council may subsequently only reject the EP version and replace it with its own through a unanimous vote. The EP also must approve the E.C. budget, and, importantly for U.S. interests, must ratify all E.C. treaties with non-member countries.

The **Court of Justice** (ECJ) is comprised of thirteen Judges and six Advocate-Generals, each appointed by agreement among the national governments for six-year terms. As the "Supreme Court" of the Community, the ECJ determines the validity and correct interpretation of challenged Community law provisions. A new Court of First Instance has also been established to relieve the backlog of cases awaiting decision by the ECJ.

The ECJ does not have a role in legislating individual 1992 laws as do the other three Community institutions described above. Through its legal decisions, however, it has been a driving force behind European integration generally and in several instances has forced the Member States to eliminate barriers to free trade within the Community, as noted above in the Cassis de Dijon decision, and confirmed by recent decisions regarding Italian pasta regulations, the German beer purity law and the Danish bottle law. Individuals and companies may challenge E.C. or member state policies directly in the ECJ. This is different, for example, to the GATT, where only member governments may lodge complaints against each other.

The institutional structure of the E.C. provides U.S. companies with a number of points of access to voice their concerns and opinions on EC-92 proposals:

-- Specialists within the relevant directorate of the European Commission;

-- Member state trade and industry associations, as well as the E.C.-wide employers' association (UNICE), headquartered in Brussels;

-- Functional ministries of national governments in sympathetic member states;

-- Member states' permanent delegations to the E.C., who do most of the background work for the Council of Ministers' meetings through the Committee of Permanent Representatives (COREPER);

-- Members of the European Parliament who may be sympathetic to the position of the U.S. company;

-- National E.C. member state legislatures, which must enact all EC-92 directives into specific laws.

Also, it is very important that U.S. companies should remember contacts with relevant U.S. government representatives in Washington and Brussels -- general contacts are listed at the end of this report.

II. MAJOR ISSUES FOR U.S. COMPANIES IN EC-92

1. TECHNICAL AND ENVIRONMENTAL STANDARDS

One of the major components of the internal market is the elimination of differences in technical standards, that serve as barriers to intra-E.C. trade. The issues associated with the elimination of technical standards barriers within the E.C. and the establishment of a new E.C.-wide standards process may affect more U.S. companies than any other EC-92 issue.

In view of the Cassis de Dijon decision and the Internal Market program, a wide range of technical "framework" standards are being negotiated. Community policies will put particular emphasis on certain sectors, including information technology and telecommunications, pharmaceuticals, chemicals, medical products, construction equipment and food products.

From the U.S. perspective, it should be understood from the outset that the reform of the technical standards process in the E.C. is not intended as a market-opening device with respect to non-E.C. trade partners. E.C. documents indicate that the E.C. will remain bound by existing GATT obligations related to technical standards. But the E.C. has undertaken no commitment to widen opportunities or to eliminate existing standards conformance problems for producers outside the E.C. as part of the 1992 process.

Nevertheless, the harmonization of technical standards can potentially create substantial benefits for U.S. companies -- even those operating outside the E.C. itself. Under EC-92, U.S. companies at most will need to obtain certification from only one E.C. authority for the product to be considered as duly acceptable throughout the E.C. market. In some cases, the continuation or renewal of existing international mutual recognition agreements may even mean that normal U.S. certification procedures will also allow products to be certified for use or sale throughout the E.C. But typically such agreements only exist for a limited range of products, and it is unclear how rapidly mutual recognition agreements will be developed under the new E.C. system. And the negotiation of new standards for testing procedures allow scope for the "harmonizing up" of standards to a degree that U.S. producers consider unreasonable, unnecessary or even anti-competitive with regard to world market sales.

The New E.C. Approach to Standardization

Beginning in 1983, the E.C. developed a new approach to product standardization and harmonization, which has been incorporated into the internal market concept. As succinctly summarized in Ernst & Whinney's August 1988 report Europe 1992: The Single Market, "Any product which can be sold in the member state in which it is produced will be freely marketable in other parts of the E.C., unimpeded by diverse national standards or testing and certification practices." The emphasis in this approach is on "mutual recognition and equivalence," as opposed to negotiation of detailed manufacturing and process standards. There are three main ways of introducing this new approach:

-- A 1983 directive prohibited member states from creating new technical standards through regulations that would serve as market barriers between E.C. countries;

-- A new E.C. standardization procedure was created through the New Approach to Technical Harmonization, formally agreed in 1985;

-- E.C. governments will be required to accept agreed guidelines for standards and procedures in testing laboratories. This will mean results from other E.C. countries' certifying laboratories will be accepted by all E.C. countries.

Within this approach, there is a strong distinction between "standards" (defined as voluntary specifications) and "technical regulations" (mandatory requirements imposed by law). The E.C. framework directives deal with technical regulations, where necessary, by setting essential requirements for the E.C. as a whole. The E.C. is also promoting voluntary standardization at the E.C. level, not only for the purpose of fulfilling the legislative goal of mutual recognition and equivalence, but also because common standards in general make economic sense.

How will the Community implement this approach? The basic directives are relatively general. The key question will be how they are to be translated into specific product standards recognized and accepted across the E.C. And while the emphasis may be on mutual recognition and equivalence, these evolving E.C.-wide safety and product standards may affect the manufacturing and application of covered products. For setting industry standards, the E.C. has adopted the approach of reliance on existing private Europe-wide standards institutes for general and electrical products (known by their combined abbreviations as CEN/CENELEC).

The enhanced mandate provided CEN/CENELEC by the E.C., and how this body interacts with the national standards organizations, particularly DIN (Germany), BSI (U.K.) and Afnor (France) are described in detail in the European Commission publication Common Standards for Enterprises (written by Florence Nicolas of Afnor, and published in August 1988). This booklet should be required reading for U.S. companies concerned with CEN/CENELEC, so that they understand the formal rules of the system. The goal, as expressed in this document, is that the process should develop in a transparent manner.

It is, however, far from certain that the development and implementation of standards will be as transparent as either the European Commission or U.S. industry might hope. There are serious concerns among some industries, particularly some U.S. exporters, that the process will not allow non-European comment at a sufficiently early stage to prevent the development of E.C.-wide standards as a trade barrier. An excellent brief summary of this process from the U.S. perspective, which also discusses this concern, has been written by Patrick Cooke and Donald Mackay of the National Bureau of Standards in the article "The New EC Approach to Harmonization of Standards and Certification." It was published in the Commerce Department's bi-weekly magazine, Business America on August 1, 1988, and is appended to this report.

In principle, the adoption of common standards is widely seen by U.S. companies in Europe as a major benefit. U.S. companies with production facilities in Europe believe that they will be able to rationalize production across national frontiers to a much greater degree than at present. This process will be facilitated for companies heavily reliant on road transportation by accompanying liberalization of national rules related to domestic and international trucking. U.S. exporters may achieve comparable benefits. Whatever standard is adopted for a product, the potential U.S. exporter will be assured that complying with this standard provides access to the entire E.C. market.

Despite these potential benefits, there are serious concerns that some European companies with rigid standards currently in place in their home national market will seek to protect and strengthen their E.C. market position by "harmonizing up." That means having the E.C. adopt their own national standards on an E.C.-wide basis. Such an approach would, of course, defeat the purpose of "mutual recognition and equivalence." The need to achieve consensus within the CEN/CENELEC process mitigates against such outcomes, but at present there is a high degree of uncertainty among companies about how the consensus-building process will work in practice.

There are four ways by which U.S. companies can counteract the problem of "harmonizing up" in the E.C. standards-setting process:

- U.S. companies operating in Europe should participate fully in national and E.C.-wide standards bodies that will have access to the EC-92 standards process. This may be the only way that U.S. companies can obtain access to the standards process during the initial development phase. As non-E.C. producers may be excluded from the early (and crucial) stages of the CEN/CENELEC standard-setting process, it will be important at this stage to identify distributors and potential E.C. production partners who can serve as effective supporters of the U.S. company's position.

- The E.C. requires CEN/CENELEC to adopt existing International Standards Organization (ISO) or International Electrotechnical Commission (IEC) standards where they exist and are appropriate. U.S. companies should insure that they are familiar with ISO/IEC standards and are prepared to implement them for products sold in Europe. But it should also be recognized that relatively few ISO standards have been developed in many product areas. Recent comments by the CEN/CENELEC chairmen indicate that this latter problem may be alleviated by trying to develop new standards initially at the ISO/IEC level, rather than starting at the E.C. level.

- All draft CEN/CENELEC standards and specifications are now supposed to be circulated to the American National Standards Institute (ANSI) before final adoption. Concerned U.S. companies should contact ANSI for information on proposed product standards of relevance to them.

  Some U.S. companies and industry associations have said that ANSI receives drafts too late in the CEN/CENELEC process to allow timely comment by non-European companies. U.S. companies should indicate to both their E.C.

contacts and U.S. government contacts if such notice is not timely enough to allow for U.S. reaction and input. CEN/CENELEC may reduce this problem through a new monthly publication listing all upcoming product standards projects.

-- In developing U.S. national standards and in participating in worldwide standards bodies, U.S. companies should seek to ensure a maximum level of conformity between international norms and national standards in Europe, North America and Asia.

One final and important note should be added on the development of standards. U.S. companies should expect a general process of upwards harmonization particularly with respect to E.C. environmental standards. Environmental concerns are now of major political importance in the E.C. This is reflected in the addition of an environmental title to the Treaty of Rome by the SEA. And Article 100a.3 now provides that "The Commission in its [internal market] proposals...concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection."

Certification and Testing

Another important question regarding the impact of new E.C. standards procedures involves the mutual recognition and equivalence of testing procedures and results. A draft November 1988 European Commission policy statement on technical specifications, testing and certification provides some clues as to E.C. plans.

The first basic question posed in the draft paper is to what degree and for what products will the E.C. require third-party testing and certification, as opposed to self-certification? The November draft paper indicates that the basic rule could be that self-certification will be applied when product design conforms to an established E.C. design standard. But "when...such standards do not exist," the paper continues, "or...the manufacturer...prefers to apply other manufacturing criteria of his own choice, the demonstration of conformity to the essential requirements should involve the intervention of a third party, either by certification or by independent third party testing."

This approach could have major implications for U.S.-based producers that provide products that probably meet essential E.C. health or safety requirements, but do not necessarily meet specific E.C. design or testing criteria. The issue has been explained thus by a U.S. chemical manufacturer:

> What is of primary concern is that the Directives and Standards flowing from those directives may either ban products for sale in the E.C....or may establish test protocols that are entirely different from those performed in the United States and would require certification that the product has been tested in accordance with these protocols...The concern on the part of U.S. chemical exporters would be the expense of running the new tests and the time lost [of]...2-5 years...This would effectively keep somebody out of the marketplace until the tests had been completed.

To address this type of problem in the past, bilateral agreements have been developed between U.S. and E.C. national or multinational standards authorities on mutual recognition of certification of products or processes. But such agreements cover relatively few products, and only some E.C. member countries. Moreover, in some cases even these bilateral agreements could be nullified by the draft proposal under consideration in the Commission.

However, the Commission's draft statement devotes little time to this important issue. It states that non-E.C. origin products will have non-discriminatory access to E.C. conformity assessment procedures under terms of the GATT Standards Code. But it also notes that the GATT "does not lay down binding obligations...[regarding] participation by foreign testing and certification bodies in mutual recognition arrangements." The paper takes note of existing bilateral arrangements only with the EFTA countries. Otherwise, it considers only the future negotiation of such recognition agreements at the E.C. regional level. The paper does state that in all areas subject to either E.C. or national legislation, no bilateral agreements by member states with non-E.C. countries are allowed, "as such agreements confer easier access for third countries to the common market, which is a matter of common commercial policy under Article 113 of the [Rome] Treaty."

In summary, the E.C. attitude to international mutual recognition agreements will depend on whether products are subject to legislated regulations. If they are, mutual recognition agreements will have to be concluded by the E.C. and bilateral agreements will have to be renegotiated. Otherwise, the issue will be a matter for the private sector, and existing bilateral international agreements will be of no direct concern -- they will be neither enforced nor nullified by the E.C.

The conditions for negotiating future E.C. bilateral recognition arrangements with non-E.C. trading partners are summarized in the November draft statement as follows:

- -- The E.C. must be assured of the technical competence of the non-E.C. partner;
- -- The agreement must secure reciprocal benefits;
- -- Participation in the agreements is limited only to testing and certification bodies actually conducting the tests or issuing the certificates.

Even receiving the new "CE" mark may still not be enough to assure a company that its product will have clear sailing throughout the E.C. market. Concerns have been expressed in Europe that only products meeting national standards criteria and receiving national standards body labels can still be sold in some markets. For example, insurability rules can be used to keep out products not meeting a specified national standard. To ensure adequate preparation for the EC-92 market, U.S. companies should now identify obstacles related to the national application and use of standards that may inhibit E.C.-wide distribution of even those products that conform to new E.C.-wide standards. Then the next step will be to identify potential E.C. and U.S. support for the elimination of such effective barriers.

2. PUBLIC PROCUREMENT

One of the most far-reaching proposals in the 1985 internal market package dealt with public procurement. The Cecchini report on the economic cost of "non-Europe" calculates that public sector purchasing is equal to 15 percent of the Community's total gross domestic product, or a total of about $600 billion. Currently, just 0.14 percent of GDP, or less than $1 billion worth of goods and services, is purchased from E.C. companies outside the purchasing country's national territory. This shocking statistic lies behind the Commission's drive to open national public sector procurement markets to intra-E.C. competition.

While E.C. directives on public works and supply contracts are currently in force, these are generally perceived as weak and ineffective. Completing the internal market will require government procurement to be based on fair competition as opposed to national identity. This process is effectively to be completed in two steps:

1) Improving existing directives on public works and public supply contracts. The new public supply contracts directive was approved in final form by the Council of Ministers on March 22, 1988 (Directive 88/295/EEC). An amended proposed directive on public works contract procedures was submitted to the Council of Ministers on June 21, 1988, following receipt of proposed amendments from the EP. The Council has adopted a "common position" on this draft directive, indicating general agreement on substance, and the directive should be approved in final form within the next year.

These two directives work in a similar way. The bidding process in each country must be made completely transparent, with the elimination of single-bid or no-bid contracts without adequate public notice. This will be achieved by changes in contract notification procedures. In addition, the legal powers of the Commission to nullify contract awards will be strengthened. It is anticipated that in most cases these powers will be used on an advisory basis with respect to member state governments, before actual contract awards are made.

2) More controversy has been aroused by the other major initiative, the proposed extension of open public procurement rules to previously excluded sectors -- telecommunications, water, energy and transport. The Commission's formal proposals in this area have only recently been announced, in three documents issued on October 11, 1988:

- -- Proposed directive on procurement procedures of entities providing water, energy and transport services;
- -- Proposed directive on procurement procedures in the telecommunications sector;
- -- Communication explaining the Commission's policy proposals in these two areas.

The most important point for U.S. companies is that these proposals create no new rights of access to the E.C. public sector market for products made outside the E.C. The Commission notes in parts II.D and III.F of the October 1988 communication that these sectors are generally excluded from the E.C.'s GATT obligations, therefore, "...Contracting entities are placed under no obligation to apply the provisions of the Directives to offers having their origin outside the Community."

To determine whether a product is covered by these proposed directives, the Commission proposes a 50 percent "local content" test: "...An offer is considered having its origin outside the Community when more than half its value represents goods or services produced or performed outside the Community." This local content rule is subsequently ameliorated for companies with investments in Europe by a broad definition of what may be included as local content: "...In the case of offers from subsidiaries or agents, a substantial part of the value of the offer may represent economic activity within Member States, and can thus be considered of Community origin."

The proposed directives also would create a positive requirement to discriminate in favor of E.C. suppliers over non-E.C. source suppliers, when the cost difference is 3 percent or less of the contract value. There is no sliding scale, so that a 50-percent E.C. content proposal, for example, is just as "European" as an 80-percent E.C. content proposal.

The justification for these actions that frankly discriminate against foreign trade is that the primary beneficiaries of EC-92 should be industry in the E.C. The Commission states that, "First, provisions are needed to defend the Community's commercial interests and preserve its negotiating position by making no unilateral concession but on the contrary creating a positive incentive for third countries to give guarantees of equal access to similar markets." The 50 percent E.C. content threshold and the contract bid margin have obvious precedents in U.S. "Buy-American" legislation. "Second," the Commission paper continues, "Community producers should, where necessary, be given the necessary time for the industrial adaptation required to meet the objectives of 1992 and the day when reciprocal access is finally agreed."

Thus the local content rule on public procurement in the excluded sectors is part of a strategy not just to protect E.C.-based producers, but also to force open public procurement markets internationally. The Commission is also seeking the power for itself and the Council of Ministers to grant other countries access on equal terms to public procurement in the excluded sectors, upon reaching agreement "through bilateral or multilateral negotiations" assuring equal access for E.C. producers in the trading partners' markets. But since it is not clear how successful this strategy will be, the proposed Commission policies will in the meantime perform the second task, that of "providing necessary time for industrial adaptation," or, in other words, protection for developing and restructuring industries.

Insofar as the GATT is concerned, the primary focus of such negotiations would not be the Uruguay Round, in the Commission's view, but rather negotiations among present GATT Procurement Code signatories on expansion of the code. This would have the advantage of including only countries that have already accepted the principles of such a code. It

would notably exclude the less-developed countries. Of course, progress in the Procurement Code could always become part of an overall GATT package that includes the Uruguay Round results. The question of trade reciprocity and EC-92 will be discussed in a broader context in the next section.

Until any reciprocal access agreements are negotiated, the E.C. policy might also be construed as conflicting with the telecommunications provisions of the U.S. Omnibus Trade Act of 1988 (Secs. 1371-1382). This subject will be examined under the telecommunications heading in Section 5 below.

There are two other features of the procurement directives for the excluded sectors which should not be overlooked by companies:

-- First, the directives require that specifications in a contract must be in conformity with existing European standards, except that an indefinite waiver is provided when the contracting authority can show incompatibility with existing national systems and equipment or "disproportionate cost" in effecting a changeover to E.C. standards in the contract. The Commission staff's present expectation is for any such protection to diminish rapidly, to disappear in three to five years.

-- Secondly, the procurement directives in the excluded sectors do not apply to public purchasing authorities per se, but rather to monopoly providers of public services in a country or region -- whether these suppliers are themselves publicly or privately owned. Thus, for example, British Telecom (private) is included as a "contracting entity" as well as the publicly-owned Deutsche Bundespost network or the French PTT. This provision broadens the definition of public procurement, in an era of the privatization of publicly-owned monopoly entities.

This point also could have negative consequences for U.S. companies, depending on the E.C.'s interpretation of the concept of reciprocity of market access. Access to contracts for publicly-owned telecommunications or power projects in the E.C. would depend on the E.C.'s interpretation that their companies (whether in Europe or the United States) had equivalent access to such contracts in the United States, even if most of these contracts are privately let. For example, one large European-owned telecommunications company provided the opinion that such U.S. entities were indeed already open to E.C. equipment sellers to the degree envisioned in these directives -- but another company emphatically held that they were not.

The initial prognosis with respect to the opening of public procurement contracts is that it will proceed slowly, characterized by an interaction of political pressure with the demands for creating a more efficient public services infrastructure compatible with the objectives of EC-92. There is a consensus among both E.C.-owned and U.S.-owned companies in Europe that the proposal will not worsen U.S. companies' existing access to a public procurement market that is highly protected by member state governments and that the process could achieve some increased opportunities for U.S. firms with an investment presence in Europe. It also should be emphasized that, within the E.C., the proposed rule creates an option as far as considering U.S.-content bids are concerned. No purchaser is obliged to set aside a U.S.-origin bid, whatever the level of its E.C.-content.

On the negative side, the explicitly protectionist "buy European" provision will probably be accepted in some form. Some U.S. industries have indicated that the 3 percent margin rule will be a substantial handicap. More generally, the adoption of an explicit local content standard combined with the restriction of public procurement liberalization to E.C.-source products and services is an unfortunate step. It could establish a new and perhaps significant trade barrier between the E.C. and other countries, at the same time as the E.C. and its trading partners are seeking liberalization of trading rules in the GATT negotiating round, and national governments around the world are weighing the advantages of protectionist versus liberal trade policies.

In this environment it is important for U.S. companies to realize, as many already have, that major multinational alliances designed to gain access to public procurement markets in the E.C. could precede, not follow, the effective implementation of EC-92 directives. For example, the last two years in the telecommunications and electronics sectors have seen:

-- The acquisition battle among Siemens, AT&T-Philips and Ericsson for the second-ranking French public network telecommunications equipment supplier;

-- The announcement on February 13, 1989, of a partnership between AT&T and publicly-owned Italtel of Italy in the development and marketing of public and private telecommunications equipment for Italy, Europe, the United States and other markets;

-- The joint GEC-Siemens hostile takeover bid for Plessey, the British defense contractor and electronics firm, a battle in which the U.S. firm General Elective has also played a major role;

-- The IBM-Siemens joint venture in the marketing of private business exchange switching equipment.

The apparent lesson, for U.S. companies who wish to be competitive if the public procurement market opens up, is that it may be risky to await the shakeout of European suppliers or the full opening of the market to outside producers through negotiated trade agreements. Within the excluded sectors public procurement market, the first essential move may be the establishment or strengthening of local ties through the company's own E.C. base and through close relationships with E.C. producers.

3. RECIPROCITY

No issue has been of greater concern to the U.S. public regarding EC-92 than the question of reciprocity and whether the E.C. is seeking to construct a "Fortress Europe." This subject has already been broached in the previous section on public procurement; in the fourth section we will look in more depth at trade reciprocity aspects of policies in specific sectors which are of particular commercial policy interest in the E.C. This section will look at the more general evolution of the reciprocity issue.

In recent months, the outgoing E.C. Trade Commissioner, Willy de Clerq, has stated several times that any opening of the E.C. market to foreign firms would have to be matched by reciprocity in their markets for E.C.-based companies. These remarks contributed to a high level of international concern that the internal market meant the E.C. was retreating into a "Fortress Europe." Foreign access would only be granted on the basis of specifically negotiated bilateral reciprocal agreements. Concern over such an evolution of E.C. policy has been openly expressed here by the Secretary of Commerce and high-level representatives of the State and Treasury Departments.

This concern is amplified because the United States and the E.C. are also participating in the Uruguay Round negotiations on changing the rules in the GATT, the multilateral international trading system. The current commitment is to complete the GATT negotiations by 1990. But it is hardly likely that the E.C., which negotiates as a unit in trade issues with the rest of the world, will make any GATT commitments that would run afoul of its own evolving EC-92 policies on, for example, state subsidies, public procurement, local content and sectoral trade issues.

Another key issue is the question of the rights of foreign-owned enterprises operating in the E.C., in view of the reciprocity policy and Article 58 of the Treaty of Rome. Article 58 provides that any company organized to do business within the EC -- without any explicit statement as to ultimate parentage of the company -- shall be considered as having the same rights under the treaty as a "natural person." The reciprocity approach -- particularly as framed in the draft Second Banking Directive of June 1988 -- seemed to call into question retrospectively the rights of U.S. subsidiaries established in the E.C., if it were determined that their home government did not provide "comparable market access" to E.C.-based enterprises. Reports that the Commission's Legal Service was being asked to review the application of Article 58 to foreign investment within the E.C. added to these concerns, even though no final report on this issue has been produced.

In an important statement issued on October 19, 1988, the Commission sought to define more clearly its position on the general question of reciprocity and related specific issues. The Commission took the unusual step of publicly declaring the outcome of an internal "policy debate" within the Commission itself in this statement, entitled Europe 1992: Europe World Partner. The statement sought to reassure trading partners that "1992 Europe will not be a fortress Europe but a partnership Europe."

On the general issue of reciprocity, the Commission undertook a fundamental definition of this term. The statement emphasized the E.C.'s existing international trade

commitments as well as a commitment to achieve further liberalizations of market access through GATT multilateral negotiations -- but maintained that "It would be premature to grant non-member countries automatic and unilateral access to the benefits of the [E.C.] liberalization process before such new agreements exist." This was a restatement of the basic position of no automatic extension of benefits, without reciprocal rights for E.C. producers in the trading partner's home country.

But the statement followed with an important series of qualifications regarding the meaning of reciprocal access:

-- The E.C. seeks "similar...or at least non-discriminatory opportunities in [foreign] firms' home countries..."

-- "Nor does reciprocity mean that the Community will ask its partners to adopt legislation similar to its own."

-- The E.C. will not seek "sectoral reciprocity based on comparative trade levels, this being a concept whose introduction into United States legislation has been fought by the Community."

The key, in other words, was the general existence of fair and "comparable" market access (a term used in the U.S. International Banking Act of 1978), not mirror market-opening legislation. There would appear, for example, to be leeway for accepting that U.S. state regulations against interstate banking should not be used to bar U.S.-owned banks from acquiring branches across national boundaries in the E.C., as long as the U.S. rules were applied in the same manner to domestic and foreign-controlled banks.

Such an interpretation would conform to the important principle of national treatment. This principle means the treatment of foreign enterprises on the same basis as domestic enterprises and in accordance with international law. It has increasingly gained support as a major principle of international law, in bilateral treaties, in policy positions of the multilateral Organization for Economic Cooperation and Development (OECD) and in U.S. international economic policy positions.

On the other hand, the E.C. would not extend non-discriminatory or "national" treatment to companies in cases where the non-E.C. host government does not provide equivalent non-discriminatory access. For example, blatant discrimination against foreign suppliers through such laws as the Buy American Act would mean that U.S. exporters could not fully participate in the opening of the E.C. public procurement market.

The October 19 statement added a number of important clarifications under the heading of "specific aspects" of application of the policy. Some of the more significant ones for U.S. industry can be summarized as follows:

External aspects of the removal of physical frontiers (quotas): This subject is not, strictly speaking, a reciprocity issue, though obviously a matter of great importance to the E.C.'s trading partners. The statement promised that "Completion of the single market will mean the removal of quantitative restrictions and will require unified [i.e., E.C.-wide]

import rules in respect of non-Community countries. It is possible, however, that in a number of sensitive spheres, national measures will have to be replaced by Community measures." As will be shown in the next section, this particularly refers to automotive quotas. In such cases, the Commission promises, "These measures will not result in a higher level of protection than at present."

Technical standards and public procurement: The Commission reemphasized that the program in these areas would completely respect existing international obligations. As far as standards are concerned, this includes adoption of existing international standards as E.C. standards, where applicable. But both the mutual recognition of testing and certification procedures and access to public procurement in those sectors excluded from GATT agreements would have to be the subject of future negotiations.

Capital movement and financial services: The Commission reaffirmed the principal of erga omnes regarding capital flows, which means free movement whatever the source or ownership of capital within the E.C. (see Section 9 below). The Commission also established some important qualifications regarding the proposed Second Banking Directive and Article 58 concerns of U.S. companies. While indicating possible restrictions on "newcomers" based on reciprocity of access, the Commission stated that "...There can be no question of depriving the subsidiaries of foreign firms already established in Community Member States of the rights they have acquired."

Competition policy and takeovers: In view of the proposed E.C. regulation on competition policy discussed in Section 8 below, the Commission made an extremely significant statement that could have some implications for U.S. companies. It noted that, "Should any Community rules on takeover bids be drawn up, the possibility of including provision for obtaining comparable conditions for Community firms in the non-member country concerned should be considered in cases where a firm from a non-member country is the purchaser."

The general statement on reciprocity has helped reassure U.S. companies presently operating in Europe that they will not be the target of a general "Fortress Europe" policy, which uses U.S. companies in the E.C. as hostages to insure access for the E.C. on totally equal terms in the U.S. market. But the statement is not a blanket endorsement of the national treatment principle -- even though all member states of the E.C. have individually endorsed this principle by signing the 1976 OECD national treatment declaration. And the E.C. has not clearly indicated that it will apply Article 58 as an unqualified basis to future establishment of foreign-owned enterprises in the E.C.

The E.C. has not abandoned its general philosophy of reciprocity as an approach to solving the problem of how to ensure that producers in the E.C. are the primary beneficiaries of EC-92. How this policy may be applied in some important specific sectors is the focus of the next section of the report.

4. SECTORAL ISSUES

A major subject within the EC-92 program is the effect of internal market liberalization on E.C. trade and competitiveness in specific commercial sectors. Generally, the E.C. is moving toward a common commercial policy in such sectors, which means not only liberalization of the internal market, but a common external trade policy, including elimination of remaining national trade barriers against non-E.C. goods. The battle over reciprocity in particular may be mostly fought over such specific sectoral trade issues. All commercial sectors may be affected in varying degrees, but three sectors especially illustrate the broad scope of the policies and practices that will be changed due to the impact of the EC-92 program.

a) Automotive Trade

The "globalization" of existing E.C. national quotas is perhaps the most politically explosive subject on the EC-92 agenda, both among member states and in trade relations with the rest of the world. A U.S. auto company executive in Europe explains why in the following estimate:

> Without quotas and assumed politically motivated restraints in some countries, the overall Japanese share of the European new-car market could rise from the current 11 percent to as high as the 30 percent that we see in North America. That shift would threaten perhaps ten major assembly plants and as many as 300,000 jobs in Europe.

Some E.C. countries, such as Germany and the Benelux countries, maintain no quotas on Japanese car exports to their markets. The U.K. maintains only an informally negotiated industry-to-industry "gentlemen's agreement." This effectively holds down the level of imports to around 11 percent. Also, Japanese companies have been required to meet a local content standard if they are to receive regional aid, and if vehicles from factories in the U.K. are not to be counted against the voluntary restraint agreement. France uses its vehicle registration procedures to keep Japanese imports to 3 percent of the market, while Italy and Spain allow only a small, specified number of units, under quotas registered with the GATT. Thus, not only quota levels but the nature and implementation of the quotas vary significantly among the E.C. member states.

No decision has been taken regarding the harmonization of Japanese car quotas. The French government and automobile industry have pressed for an E.C.-wide quota, with an 80 percent local content standard to prevent Japanese evasion of the quota through assembly operations. Both the German government and car industry have opposed such a stringent quota and local content policy. At this point, only two principles appear relatively certain:

-- There will be some type of E.C.-level restraint;

-- In principle, any restraint will be temporary.

In 1988, the Brussels-based European carmakers association (CCMC - representing all major E.C.-owned companies) did adopt a common industry position. This position called for the stabilization of total Japanese exports to the E.C., at least until E.C. car exports to Japan reached half the level of Japanese exports to the E.C. CCMC called for establishment of an 80 percent E.C.-content standard to determine whether cars made by Japanese producers should count against the number of units included in the stabilization agreement. But under pressure from German companies this common position is currently being reassessed in view of the question of the impact on automotive trade with the United States.

The automotive quota issue is of major concern to U.S. interests for a number of reasons. The two largest U.S. car manufacturers have extensive operations in the E.C. and are among the six companies that hold roughly coequal leading shares of the mass market. At present neither company is actively supporting tough E.C.-wide quotas on Japanese cars. In fact, there is serious concern in Europe that Ford and GM could potentially cooperate with Japanese companies in exporting U.S.-assembled "transplants" into the E.C., to take advantage of low dollar-based costs and avoid any E.C. quotas on vehicles shipped directly from Japan. There are strong disagreements within the E.C. car industry on how this issue should be handled. For its part, the U.S. government has not so far indicated that it would accept any E.C. effort to transfer national E.C. car quotas to a global quota, especially if such a quota were made to apply to goods shipped from the United States.

b) Telecommunications

No issue in EC-92 is thornier than its application to the telecommunications sector. A more efficient, less nationally-oriented and more internationally competitive telecommunications services and equipment sector is viewed as perhaps the crucial link in creating a more integrated E.C. internal market. The Cecchini study reports estimates of telecommunications equipment costs across the E.C. as being 80-100 percent higher than in the United States, with costs of business customer services typically higher by a similar proportion.

The strategy of the Commission is set out in its basic document on telecommunications policy, the "Green Paper" of June 30, 1987. One year later, the Council of Ministers approved a resolution explicitly linking development of a common market for telecommunications services and equipment to the EC-92 program. The telecommunications policy for the Commission is developed within a self-contained telecommunications directorate, DG XIII.

The Green Paper in fact represents a compromise between the traditional European concept of publicly-owned basic telecommunications network services and the newer international trend of establishing a free (or at least freer) market in services using the basic network and the equipment that can be linked to it. Basic services, redefined in the Green Paper as the "reserved services," are those which will be provided by Government-owned or government-licensed telecommunications monopolies, based primarily on the principle of universal access and availability. Traditionally, this has clearly included telephone and telex service.

"Competitive services" are defined as including not only the manipulation and processing of data carried on the basic network, (the so-called "value-added" services) but also providing "intelligent networks" that handle communications according to a customer's own needs, often on equipment that the customer may have purchased and installed from an independent vendor. Another key compromise in the Green Paper is that the national telecommunications administrations (PTTs) would be allowed to participate in the competitive services market, while retaining their regulatory and reserved services functions.

To implement this policy, which leaves the "integrity" of the national basic services network intact, while encouraging the competitive stimulus of alternative equipment and services providers, the E.C. has adopted or proposed a number of specific steps. The development of these specific policy initiatives will be crucial for U.S.-owned companies that hope to be competitive in the evolving E.C. telecommunications market for both services and equipment:

-- Opening of telecommunications procurement. This issue was discussed in the previous section on public procurement. In addition to the comments above, it should be noted that the draft directive of October 1988 requires a compulsory public and international call for all works and supply contracts. This includes a compulsory annual information notice announcing all intended purchases for the year ahead. Also, as with existing procurement directives, there is a requirement for full transparency of the purchasing behavior of the telecommunications entities in E.C. member states.

The E.C. policy does not initially address continued discrimination against non-E.C. source products and services. It does allows member countries at their discretion to entertain competitive non-E.C.-source bids. And, as mentioned earlier, it indicates that the E.C. intends to negotiate bilateral and multilateral market access agreements.

The policy apparently conflicts with the telecommunications reciprocity provisions of the U.S. Omnibus Trade Act. Section 1374 of the U.S. law provides for the citation by USTR of those foreign countries denying equivalent market access to U.S. firms. In an announcement of February 21, 1989, the USTR stated that this provision at present includes some E.C. countries. The draft E.C. procurement directive would in principle ameliorate the current situation by guaranteeing equal access for those U.S. firms operating in the E.C., which provide products and services meeting the E.C. local content standard. However, the U.S. Trade Act provisions are also concerned with improved markets for U.S. exports, which would not be enhanced by the provisions of the draft telecommunications procurement directive, unless E.C. member states decided to accept U.S.-source bids.

Accordingly, the Office of the USTR identified the E.C. (along with Korea) as a "priority country" for negotiations involving telecommunications market access, as provided by the Trade Act. This decision is directed at existing market barriers to U.S. products and services. The USTR announcement does indicate that the degree of access varies considerably within the E.C.

-- Provision of terminal equipment and telecommunications services. In addition to the effort to open the public procurement market, the E.C. has already adopted a directive

requiring member countries to eliminate all exclusive and special rights to telecommunications entities for the importation, marketing, connection and maintenance of telecommunications terminal equipment. The terminal equipment directive entered into force on May 16, 1988. But France has challenged the validity of this directive before the Court of Justice, on grounds that the E.C. has overreached its treaty authority. Meanwhile, there is a similar draft directive under discussion that would require member countries to eliminate exclusive or special rights granted to telecommunications entities for the provision of "non-basic" telecommunications services.

-- European Telecommunications Standards Institute (ETSI). In conjunction with CEN/CENELEC, this body will establish agreed European standards for telecommunications equipment and services. The significance of ETSI is that it removes this function from the exclusive control of the European Conference of Postal and Telecommunications Administrations (CEPT), a collaborative body consisting solely of PTTs. CEPT will participate in ETSI standard-setting, but ETSI will also include other equipment and services providers, and user groups. ETSI, located in the south of France, began functioning in April 1988. All E.C. member state telecommunications authorities are now required to use agreed European standards as the basis for type approval of telecommunications terminal equipment.

-- E.C.-sponsored research on common standards in advanced technologies (RACE and ISDN). The Council of Ministers in 1986 approved a non-binding Recommendation on the coordinated introduction of an Integrated Services Digital Network. This will allow Europe-wide voice, video and data capabilities via the national telecommunications network. In December 1987, the E.C. also approved the "main phase" of the RACE project, RACE being an acronym for a program of pre-competitive R&D aimed at creating common standards in Europe for integrated "broadband" voice, video text and graphics communication. The main phase of RACE (to be completed by 1992) is open to the European subsidiaries of U.S. companies.

-- Open network provisions (ONP). The Commission is currently preparing a directive on the conditions of access to networks. An initial proposal was approved in December 1988.

c) Information Technology and Advanced Electronics

The E.C.'s collective sense of inferiority regarding telecommunications equipment and services extends to information technologies more generally. While there are many excellent and world-class E.C.-based companies in this broad field, most observers believe that the E.C. lags behind both the United States and Japan in many key areas, and that the balkanization of the E.C. market has been a major cause of this lag.

On the other hand, the E.C. seems more committed as a matter of policy to ensure that it retains a competitive base in the information technologies and electronics products industries -- across the board from chips to consumer products. There is a strong sense among many E.C. companies and other groups that the U.S. policy of opening its consumer electronics and telecommunications equipment markets to foreign producers, without adequate safeguards against import surges, dumped goods and predatory pricing, and without requiring reciprocal access, was a major mistake.

It would be wrong, however, to indicate that there is a complete consensus within the E.C. as to the policy measures needed to improve E.C. world competitiveness in the advanced electronics industries. In this report, we will focus on one particularly significant E.C.-sponsored research program -- ESPRIT -- both as a guide to the E.C.'s overall policy direction and to the relationship with U.S. interests.

ESPRIT is the acronym for the European Program for Research and Development in Information Technology. ESPRIT was established in 1984 to promote precompetitive intra-European technological research cooperation on information technology projects with commercial applications. The program provides matching funds (on a 50-50 basis) for approved precompetitive research projects selected from corporate, academic and government research laboratory proposals.

The first phase of ESPRIT, with a total budget of 1.5 billion ECUs (nearly $2 billion), was completed by 1988. To quote from a recent article on ESPRIT by Jonathan Todd in the May 1988 issue of the E.C. Delegation magazine Europe, the program "concentrated on microelectronics, advanced information processing systems (including software) and application technologies, including computer-integrated manufacturing and office systems." The Council of Ministers was sufficiently impressed with the results of the program to double its budget for the period 1989-93.

U.S. companies in Europe have been concerned that the goals of ESPRIT may be more oriented to improving the competitiveness of E.C. firms, rather than E.C.-based industry. This is perceived by some companies as reducing the opportunities for participation by U.S. firms operating in Europe. For example, the Todd article, which summarizes numerous projects, fails to mention any non-E.C. firms, even though U.S. companies operating in Europe played important roles in some ESPRIT projects. Similarly, some U.S. companies operating in Europe, that have developed proposals relevant to ESPRIT and other E.C.-sponsored research programs, have been informally advised to allow E.C. companies to take the lead in proposing such projects to insure approval.

Heightening this concern over possible current "second-class status" for U.S. companies' participation in some E.C.-sponsored research programs is the fear, mentioned by at least one U.S. company, of an E.C. backlash against similar tendencies in U.S. government-supported programs in semiconductor and superconductivity research. Sources in the Commission note that Sematech and MCC remain closed to E.C.-owned, U.S.-based companies. If this "model" is pursued, they argue, in combination with Defense Department research that remains mostly closed to E.C. companies, then questions of mutual levels of access will increase on the E.C. side.

The primary consequence of exclusion of U.S.-owned firms from such officially-sponsored E.C. research could be in the standards area. One example may be seen in the Todd article, which cites, "'Herode,' a highly successful ESPRIT project led by Siemens, [which] developed a new international standard for office documentation architecture (ODA), now officially adopted by the International Standards Organization (ISO 8613). Siemens has been joined by ICL, Olivetti and Bull on a new project to develop practical applications for ODA, which must compete on the market against IBM's DCA/DIA standard." But, in fairness to the E.C., it should be noted that there are many ambiguities regarding competition and

cooperation in these evolving information technology fields. For example, the Commission cites the fact that IBM Germany does have a minority participation role in the ESPRIT II ODA continuation project.

The general development of E.C. standards in information technology is proceeding through the application of the principles of Open Standards Interconnection (OSI). All U.S. companies with an interest in the E.C. market should become familiar with the E.C.'s OSI process. With the support of the E.C., an informal European Workshop on Open Standards (EWOS) has been established for the purpose of coordinating input from standards bodies, user groups and manufacturing organizations to develop E.C. standards in the evolving information technology field. EWOS is also to discuss standards issues with equivalent U.S. and Japanese groups. At the same time, OSI-based procedures for product testing and certification are also being established.

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5. RULES OF ORIGIN AND LOCAL CONTENT

The previous sections raise a number of general questions about local content policies in the E.C. and rules of origin. These will be important issues in the context of the overall development of the EC-92 program. At present, the E.C. does not maintain a general local content policy. And rules of origin for non-preferential trading partners, such as the United States and Japan, are based on a rule adopted in 1968. This states that origin is conferred in the country where the last substantial process or operation that was economically justified was performed, providing also that a new product was thus created, or at least a major new stage in the manufacturing process resulted. This rule is similar in nature to the "substantial transformation" test used by the United States.

Since then, the E.C. has considered and adopted criteria to determine the last substantial operation for a number of specific products, such as radios, televisions, tape recorders, textile products, ceramic products and roller bearings. Currently, decisions are being made regarding rules of origin for semiconductors and copiers. As the subjects of these "rules of origin" decisions become more numerous, the concern is increasing that a de facto local content policy will emerge.

Local Content Rule for Antidumping Enforcement

The E.C. does maintain percentage content rules in some specific cases. Perhaps the most important example of such rules is the 40-percent local content rule applied to companies found to be dumping or illegally subsidizing exports to the E.C. market. An E.C. regulation of July 1988 (EEC 2423/88) on application of antidumping or countervailing duties addresses the problem of "screwdriver" plants -- that is, final assembly operations that may be established to circumvent E.C. anti-dumping penalties. This regulation provided that anti-dumping duties could be applied to products whose final assembly was in the E.C. The penalty can be applied to goods shipped under the following conditions:

- Assembly is carried out "by a party which is related or associated to any of the manufacturers whose exports of the like product are subject to a definitive anti-dumping duty..."

- The "value of parts and materials" produced in the country of exportation subject to the anti-dumping rule is more than 60 percent.

- The assembly operation is started or substantially increased after the anti-dumping investigation was opened.

This 40 percent rule can be ameliorated by the possibility of including costs of "research and development carried out in and the technology applied within the Community." According to Commission staff sources, the E.C. has in practice reached accommodations with related assembly companies in "virtually all anti-circumvention cases." At the current time, there are no duties being levied at the premises of assemblers in the E.C.

What is especially important from the U.S. perspective is that the the terms of this regulation could apply to production arrangements in third countries. However, the

40-percent content rule is not necessarily an E.C. content rule. Paragraph 5 of the regulation states that, "Where a product is imported into the Community from more than one country, duty shall be levied...on all imports of such product found to be dumped or subsidized...other than imports from those sources in respect of which undertakings have been accepted." (Emphasis added.)

Rules of Origin Applied to Goods from EFTA and ACP Countries

Members of the European Free Trade Association (Norway, Sweden, Iceland, Austria, Switzerland and, by associate status, Finland) have a reciprocal free-trade agreement with the E.C. The rule of origin applied to EFTA goods with respect to eligibility for free access to the E.C. market is 40 percent EFTA country content. This same level of local content is applied to goods shipped to the E.C. from over 60 African, Caribbean and Pacific area developing countries (ACP), which have a one-way (non-reciprocal) trade agreement with the E.C. under the terms of the Lome Convention. These are preferential access agreements, and the content standards applied to goods shipped to the E.C. from EFTA and ACP trade partners have, at present, no implication for more general trade and investment relations with other non-preferential trading partners.

E.C. Content and Rules of Origin under EC-92

No general guidelines for local content rules have yet been developed in EC-92 proposals, beyond those already discussed in detail with regard to public procurement in the excluded sectors. This comment includes the areas for which reciprocal access agreements may be considered. Other areas where such rules may be considered and developed notably include the question of harmonized rules governing state aids and subsidies to investors, particularly in economically depressed regions and industries. This may require a decision regarding minimum levels of local content for an industry to be eligible for such assistance, an issue which has already arisen, for example, in the case of U.K. regional aid for the Nissan "Bluebird" factory in Sunderland.

EC-92 is not proceeding in a vacuum, but at the same time as the GATT Uruguay Round. Local content rules are prominent among the issues being discussed at the GATT, principally in conjunction with efforts to address trade-related investment measures. The E.C. has in generally supported the U.S. view that such measures should fall under GATT restrictions or prohibitions. It is a concern of both U.S. industry and the U.S. government that the evolution of E.C. policy, particularly in establishing E.C.-wide rules to harmonize existing national practices, should not conflict with the progress made in expanding GATT discipline over local content rules and policies.

6. INTELLECTUAL PROPERTY

The adequate protection of intellectual property rights is a major concern of both NAM member companies and U.S. international economic policy. A quick glance at the official U.S. balance of payments statistics reveals why. In 1987 -- the last year for which complete data are available -- U.S. companies reported earning over $9 billion from foreign sources in licensing fees and royalties, while paying foreigners only $1.3 billion. This 7:1 ratio remains the most asymmetrically positive component of the U.S. current account balance. It explains the major national interest, for example, in achieving a provision on intellectual property rights as a major goal in the current GATT negotiating round.

E.C. companies and member states also have a strong interest in protecting intellectual property rights, both internationally and within the E.C. context. The effort to achieve an improved and harmonized system of intellectual property rights within Europe antedates the 1992 internal market program, though the effort remains incomplete and unfinished. For example, an E.C. Patent Convention was signed in 1975. However, as of late 1988, five of the smaller or newer member states (Denmark, Ireland, Spain, Portugal and Greece) still had not signed the convention. A European Patent Office, with membership extending to many non-E.C. European countries, has been established in Munich. Completing and improving a harmonized E.C. intellectual property rights system is seen as an important task if a more integrated internal market is to be achieved. It is also considered essential to the development of world-class competitive technologies across European national borders.

A summary of some of the major intellectual property initiatives and their present status follows. It is largely based on information provided in the latest Business Guide to EC Initiatives, published by the American Chamber of Commerce in Belgium (see appended guide to information sources).

Regulation on Counterfeit Goods (adopted 1986 by Council of Ministers, entered into force January 1, 1988). This regulation established an E.C.-wide policy to allow the confiscation of counterfeit goods imported from third countries, thus preventing their circulation and sale anywhere within the E.C. The regulation, it should be noted, applies only to goods which infringe registered trademarks. The regulation could be enlarged to include other intellectual property rights such as copyrights in 1991.

Regulation on Community Trademark and Community Trademark Office (consolidated text including member state reservations before Council for final action). This could establish a central E.C. Trademark Office in Madrid, with a Board of Appeal in Luxembourg, the seat of the ECJ. It would eliminate the present need to register trademarks in each of the ten separate national jurisdictions (Benelux presently maintains a single system for those three countries) -- though these national systems would not be eliminated.

Benefits for U.S. companies could include the elimination of national compulsory use rules, since once the trademark has been used in one member state, it would be valid throughout the E.C. Also, recognition of an infringement in one member state could also be extended to prevent use in all other E.C. markets. But the current E.C. proposals

contain provisions that could create some potential disadvantages for U.S. companies. These include a proposed cumbersome search procedure and the possibility that the refusal of one national registry to accept a proposed trademark application means a failure in all E.C. jurisdictions.

Directive on Trademarks (adopted in final form in December 1988). This important directive will establish harmonized national trademark rules. It includes a five year compulsory working proposal -- the trademark must be put to use within five years in the member state where registered, or be revoked on an E.C.-wide basis. Use in one member state validates the trademark for the whole of the E.C., which would be to the advantage of U.S. companies. All member governments are required to adopt conforming legislation within three years of final adoption by the Council of Ministers.

Community Patent Convention (signed 1975, but still not ratified by five E.C. member states, as indicated above). Once all E.C. members have signed, the CPC will protect patent rights in each E.C. country and the patent will have the same force in all E.C. member states.

Commission Green Paper on Copyright and the Challenge of Technology (issued June 7, 1988). This document outlines the copyright issues requiring immediate E.C. action, regarding application of copyright recognition to newer electronically-oriented technologies. The paper also provides a basis for the future E.C. role in the international development of intellectual property rights. As a result of the green paper, the EC Commission has proposed a directive that would extend copyright protection to computer programs. Such programs would generally be protected as other literary works under the Berne Copyright Convention. Other initiatives concerning electronic data bases and digital audio tape are likely to result from the green paper. The broadening of protection complements similar steps in the United States that have been supported by industry.

Directive on Semiconductor Topographies The E.C. has adopted a directive on the copyright protection of semiconductor designs, but only five countries (Germany, Denmark, France, U.K. and the Netherlands) have so far implemented this directive.

One further issue that should be noted here is the reciprocal treatment of E.C. intellectual property rights under Section 337 of U.S. trade law. Recent reports indicate that a GATT panel has upheld the E.C. claim. The E.C. argued that Section 337 discriminates unfairly against foreign companies that export to the United States by setting up a separate process under the International Trade Commission, rather than the federal courts, for claims relating to ownership of intellectual property rights. It was argued by the E.C., apparently successfully, that Section 337 procedures do not provide the importers with defenses comparable to those available in purely domestic cases. Since a final GATT decision has not been announced, it is not yet clear what impact this decision will have on U.S.-E.C. relations in the intellectual property rights area.

7. SOCIAL DIMENSION

The previous sections in Part II have all dealt with issues involving international trade questions and the reciprocal treatment of companies and products by the E.C. and the United States. The last three issues are different, in that they do not directly involve U.S.-E.C. economic relations, but general policy choices by the E.C. that may have a major effect on how U.S. companies do business in the European Community.

The question of the social dimension of the Internal Market has become one of the most critical subjects associated with EC-92. This is especially due to the goal of increased employment opportunity throughout the E.C., as discussed in the first part of this paper. And there have been important debates within the E.C. over the most appropriate and effective E.C. role in addressing the social dimension. This debate was stimulated by a speech that Commission President Delors made in 1988 to the annual meeting of the British Trade Unions Congress. He declared, "It is impossible to build Europe only on deregulation...The social dimension is a vital element."

What is meant by the "social dimension?" It has been defined by Delors himself in this way:

- First, measures adopted to complete the large market should not diminish the level of social protection already achieved in the member states.

- Second, the internal market should be designed to benefit each and every citizen of the Community. It is therefore necessary to improve workers' living and working conditions and to provide better protection for their health and safety at work.

- Third, the measures to be taken will concern the area of collective bargaining and legislation.

Some approaches to developing these points may be seen in a lengthy "Working Paper" on the Social Dimension, released in September by the Commission. It reflects a series of views within the Commission, primarily DG V (Employment, Social Affairs and Education). The paper basically combines two strands of action, both contained in Delors' more formally stated views.

First, there is a major concern expressed in the paper with improving labor mobility, training (especially in the poorer regions) and occupational health and safety protection. This agenda merges rather well with the Cockfield White Paper of 1985. The White Paper emphasized the physical mobility of persons and specifically proposed directives to harmonize health and safety standards for workers throughout the E.C.

European business, including U.S. companies operating in Europe, have been active supporters of the EC-92 program, and have tried to assist President Delors in increasing the momentum in public support for the program. This has included very positive support for the goals of EC-92 regarding increased worker mobility, improved working training and

a generally more competitive labor market infrastructure throughout the E.C. For its part, the Commission has been extremely interested in examining innovative approaches from outside the E.C. itself, including the United States, Japan and the EFTA countries.

Secondly, the Working Paper also included proposals to establish E.C.-wide collective bargaining and mandatory employee consultation and information rules, long-standing goals of some European labor federations. It further suggested that EC-92 and consolidation of the internal market had led to concerns about "social dumping," the migration of industry to areas in the E.C. with low wage levels and, in the view of European labor federations, low standards of worker rights protection.

Four specific proposals or issues now before the Council of Ministers, all having a long history that predates the EC-92 proposal, are related to this second agenda:

1) Worker Consultation and Information. This was the subject of the controversial "Vredeling Directive" of 1980, which still formally lies before the Council. It is unlikely that the Vredeling proposal, with its requirement of extensive sharing by management of commercially-sensitive information with employee representatives in advance of corporate decisions, will be acted on in the near future. While the September 1988 working paper indicates that some type of general consultation and information proposal should be considered as part of the Social Dimension package, several draft documents relating to this issue have been withdrawn or sent back for redrafting, indicating lack of a consensus on this subject.

2) Workplace Health and Safety Directive. Since final Council action will probably be delayed indefinitely on a worker consultation and information directive because of its controversial nature, we can anticipate that there will be efforts to achieve some of these objectives partially through policy in other functional areas. One possible example is the proposed framework directive of March 1988 on health and safety in the workplace, which aims at achieving a uniformly high standard of worker protection at the workplace throughout the E.C.

The general goal of this directive is supported by E.C. industry, in keeping with general business support for E.C. safety standards on specific problems such as noise in the workplace or exposure to asbestos. For the most part, the draft directive focuses on employer and worker responsibilities regarding safety and health standards, actions and training in the workplace environment. However, Article 5 ("Employer Obligations") would require that all "planning and introduction of new technologies shall be undertaken in close cooperation with the workers and/or their representatives, particularly in respect of the choice of equipment and the working conditions, including those aspects connected with the working environment and the physical and psycho-social well-being of the individual." Such language could obviously be subject to expansive interpretation.

3) The European Company Statute. President Delors has revived the proposal to allow companies to choose to incorporate as "European" companies, rather than as companies organized in a specific member state. Potentially, this could allow a company to gain certain tax advantages, from being able to consolidate financial reporting at the European level. But Delors' initial proposal would require that a company choose some type of

formal system of worker participation in management decisions. Following the initial negative reaction by industry, the Council of Ministers directed the Commission to draft a new European Company Statute proposal in early 1989.

4) Fifth Company Law Directive. The company law directives are generally aimed at harmonizing corporate practices and structures throughout the E.C. The Fifth Directive concerns the organization of public limited companies and their management structure. The major controversy since the initial proposal of the directive in 1972 has been the proposed requirement for some type of employee participation in the company's overall board structure. Having been approved with amendments by the European Parliament, this directive is now again the subject of consultations between the Commission and the Council of Ministers.

Employers' Views

At present, NAM and other U.S. employers' organizations in the United States and Europe are developing a common position in response to the Social Dimension program. In general, these organizations have reacted favorably with respect to the first part of the Commission agenda, which focuses on improving the overall E.C. standard of worker education, training and mobility, and thus contributing to a reduction of the high rate of unemployment in Europe. In recent years, representatives of member companies have met in a series of seminars with Commission staff to explore U.S. and E.C. private and public sector cooperative approaches to these issues.

On the other hand, the reaction of business organizations in Europe has been negative to those proposals which seek to expand consultation and information requirements on an E.C.-wide basis. While no new formal position can be taken until further draft proposals are submitted, the view on existing proposals is that they are not necessary for the development of a more integrated internal market. Indeed, "harmonizing up" in terms of creating more rigid labor policies may reduce investment in those areas that need it the most. And there is widespread evidence, cited in the Commission's own studies, that more rigid labor relations rules that restrict the flexibility of management decisions will add to the unemployment problem in the E.C., not reduce it.

There is little possibility at present that these kinds of proposals could achieve the unanimous approval in the Council of Ministers which will be required under Article 100a for adopting policies affecting social affairs and employee rights. In particular, the U.K. government, with the strong support of British industry, is committed to oppose any new E.C. industrial relations policy which it believes will destroy the balance that it feels has been restored in British labor-management relations over the last decade. The concern remains in some quarters, however, that an effort will be made to achieve such policies through directives and other proposals ostensibly related to the other areas covered by the Internal Market program. This could lead to a confrontation within the E.C. over the interpretation of the SEA itself.

8. COMPETITION POLICY

The E.C. actively and directly regulates competition in Europe, under authority assigned to it by Articles 85-86 of the Treaty of Rome. This means that the E.C. may establish regulations which have the force of law within the member states. DG IV is the competition policy directorate. Since the 1985 Cockfield White Paper was developed in DG III, it did not include any specific competition policy proposals. However, there is no doubt that major changes in competition policy within Europe must accompany the development of EC-92.

This is because member state governments also retain rights of regulating competition. The coexistence of E.C. and member state regulation creates a patchwork of rules regulating mergers and takeovers within the E.C. and results in companies in different E.C. countries playing by quite different rules. The assumption is that member state governments, through their own competition and merger control policies, should not be able to frustrate cross-border mergers and acquisitions needed to create larger economies of scale and enhance E.C. international competitiveness. And because U.S. companies have typically expanded in Europe by acquiring existing E.C. firms or establishing joint venture arrangements with them, any major changes proposed in competition policy will have a major effect on the ability of U.S.-owned firms to cope with EC-92 market changes.

E.C. enforcement of competition policy has been restricted to company practices, and has not included direct control of mergers and acquisitions. Each country has its own policy in this latter area. The U.K. and Germany have the most aggressive national antitrust policies of the U.S. type, enforced through the Mergers and Monopolies Commission and the Bundeskartellamt, respectively. Other countries, such as France and Italy, do not have highly developed antitrust policies, but do control company actions and merger activities as a function of national industrial policies, tax laws, price controls and other policies. Among all the E.C. countries, only the U.K. allows hostile takeovers similar to the U.S. model. And some specifically discriminate against foreign acquisitions -- the Netherlands, for example, allows only 20 percent of the voting shares of any publicly-owned Dutch company to be held by foreign persons.

Proposals to establish direct E.C. control over mergers and acquisitions have been debated in Community institutions for fifteen years, with little forward progress. But the imminence of the enhanced internal market has spurred progress toward achievement of a new E.C. regulation in this area. The major proposal to emerge from DG IV, under the leadership of departing Commissioner Peter Sutherland, is the revised draft regulation to establish E.C. control over all mergers "having a Community dimension." It was proposed by the Commission in May 1988, after considering EP amendments to earlier drafts. Several revised versions have subsequently been circulated.

This draft regulation would establish E.C. control over all proposed "concentrations" (mergers and acquisitions) of companies with an E.C. dimension. An E.C. dimension is defined as --

-- Worldwide turnover greater than 1 billion ECUs for the companies combined;

-- Aggregate E.C.-wide turnover of 100 million ECUs, with no more than 75 percent of the total in any one E.C. member state.

In a recent twelve-month period, the Commission counted 171 transactions that would have exceeded the turnover thresholds of the regulation, though only a relatively small share of these also met the distribution requirement. For such major cases, the Commission's intent is that it should become the sole regulating body. The preamble to the draft regulation states that, "In order to provide for a uniform system of control of concentrations having a Community dimension throughout the common market, the Member States must refrain from taking any measure which might undermine the full effect of decisions pursuant to this Regulation." (Paragraph 27, quoted from draft of July 25, 1988.)

Because the Treaty of Rome limits E.C. authority to the competition policy area, however, the very next paragraph establishes a major qualification: "...This principle does not prevent Member States from taking measures with a view to protecting legitimate interests other than competition..."

This qualification may critically affect the attitude of both E.C. companies and U.S.-owned companies active in Europe. There is strong acceptance of the concept of a Brussels-based competition policy authority, which could expedite the approval of mergers and acquisitions creating larger economies of scale in the E.C. On the other hand, both U.S. and many E.C. companies are concerned about the "double jeopardy" aspect of establishing a Brussels-based merger authority, while continuing to maintain a veto authority in the national capitals over acquisitions.

There is also a further issue that affects U.S. interests and that also currently obstructs U.K. acceptance of the principle of an E.C. merger regulation. This is whether there should be a single E.C. policy on hostile takeovers. Britain, virtually alone in the E.C., currently allows hostile takeovers (witness the recent battle between estle and Suchard, two Swiss confectionery companies, for the British company Rowntree Mackintosh, a firm with widespread activities and brand recognition throughout the E.C.). The U.K. government can stop takeovers, but principally on competition policy grounds. In the British view, it would be unfair to disarm the U.K. government's major defense against large takeovers that it views unfavorably, while permitting the effective ban on hostile takeovers in other E.C. countries.

This British view could force the E.C. and its members into a harmonization of takeover rules. Certainly it is interesting that the new British Conservative Commissioner, Sir Leon Brittan, who has been politically very close to Prime Minister Thatcher, has been selected to replace Sutherland as the competition policy commissioner. U.S. business readers should also recall the point noted earlier in discussing the Commission statement on reciprocity of October 19, 1988 -- that in applying any common takeover policy to non-E.C. firms, the Commission will consider the reciprocal rights of E.C. firms in the acquiring company's home market.

9. MONETARY POLICY

The commitment of the E.C. to closer monetary policy coordination will have a major impact on the way U.S. companies do business in Europe. At the same time, there are major issues in this area that will influence international monetary policy and exchange rate developments, and therefore the conditions of U.S. international trade.

In 1988, there were two critical developments:

1) Full Liberalization of Capital Movements within the E.C. On June 24, 1988, E.C. finance and economics ministers, meeting in the Council of Ministers, gave final approval to a directive providing for complete liberalization of capital movements within the E.C. This means the elimination of all foreign exchange controls. In addition, all domestic monetary regulations that have a specific impact on capital transactions with nonresidents are subject to a notification procedure.

All E.C. member states must eliminate any remaining capital movements restrictions by July 1, 1990, except for Spain, Ireland, Greece and Portugal, who have a grace period through 1992. The Belgium-Luxembourg economic union must also eliminate its dual exchange rate by the end of 1992. The balance of payments safeguard provisions of the Treaty of Rome remain in effect, but the Commission will have supervisory authority over the implementation and maintenance of emergency exchange controls by members. U.S. companies operating in the E.C. can therefore look to essentially complete implementation of free capital movements within the E.C. between now and 1992.

2) Monetary Union. Agreement on the capital liberalization directive both cleared the way for and impelled the E.C. toward consideration of an economic and monetary union. The success of the European Monetary System (EMS) also encouraged a strategy of closer monetary policy cooperation. The Hanover E.C. summit of heads of government on June 27-28, 1988, therefore decided to establish a committee with the task of studying and proposing concrete stages leading toward such a union. The nature and topic of study was the result of a compromise. Most E.C. governments would have been willing to include explicitly on the agenda the exploration of the questions of an E.C. central bank and a single E.C. currency, but such far-reaching measures were opposed by the British government, which has yet to join the EMS.

The importance of this subject to President Delors, formerly French finance minister, is indicated by the fact that he is personally chairing the study committee, and also holds the new Commission's monetary affairs portfolio. The leaders of E.C. central banks were also requested to join the committee in their "personal" capacities. The committee is to report its findings "in good time" before the scheduled heads of government summit in Madrid, in June 1989. Current plans call for release of a report in the spring, midway between the installation of the new Commission and the Madrid summit.

The report of the Delors committee will almost certainly make policy recommendations that go beyond the type of consultation and coordination of policies now existing within the EMS or the broader G-7 group of industrial countries. It is assumed that there would be some mandatory policy coordination features. Leaving aside the question of the British

relationship to closer coordination, another essential issue is whether there should be a "once for all" major reevaluation of the Deutsche mark before implementation of some type of mandatory coordination system. Rates in the present EMS range keep other E.C. currencies, notably the French franc, closely aligned with the DM, and therefore effectively overvalued with respect to industrial competitiveness in third country markets. But the effect of a close EMS relationship with a strong DM has also had the salutary effect of sharply reducing inflation rates throughout the E.C.

The outcome of these discussions and decisions will have a major impact on U.S. international industrial competitiveness. The movement of the DM within the EMS will affect both dollar-rate production costs within the E.C. and the competitive prices of German and other E.C. manufactured goods on world markets. Of equal significance to U.S. companies, in combination with the complete liberalization of capital movements planned by 1990-92, will be the impact on production location decisions within the E.C. itself.

10. OTHER POTENTIAL ISSUES

Export Controls

An issue not covered by the general European Commission reciprocity statement of October 1988, but related to U.S. and E.C. trade policies is the export control question. The general U.S. business assumption is that EC-92 will eventually have to include a common export control policy. Presently, enforcement of the controls agreed by the international Committee for the Control of the Export of Strategic Commodities (COCOM) is heavily reliant on national customs inspections. But these will be eliminated within the E.C. by 1992. Individual E.C. countries now maintain national control systems of varying effectiveness, which has led to U.S. concerns over diversions of national security-sensitive products and technologies.

It is not yet clear exactly how the U.S. government and the E.C. will resolve differences in export licensing practices under EC-92 and how such arrangements may affect U.S. companies. But this is an issue that should be monitored closely by American high-technology companies.

Defense Procurement

Procurement for non-military purposes in the E.C. is already covered by the existing procurement directives, which are to be enhanced as part of the EC-92 program. However, procurement of material for specifically military purposes is excluded from both the GATT code and existing E.C. directives. The October 1988 communication on the excluded sectors indicates that there are no further policy proposals at this time relating to military procurement, but states that the Commission should consider some initiatives in the near future, so that "their adoption and implementation are in concordance with the realisation of the Internal Market by December 31, 1992."

The Commission statement does not indicate that improved world competitiveness by E.C. producers should be a consideration in this policy. Rather, it relates the policy to security cooperation that would enhance development of a "European identity in external policy matters." This also conforms to the political cooperation provisions included in the Single European Act. It is not yet clear what effect proposals on intra-E.C. defense procurement will have on the U.S. defense industry or existing procurement arrangements within NATO.

APPENDIX I

MEMBERS OF THE COMMISSION AND THEIR RESPONSIBILITIES
(As of January 1, 1989)

Jacques Delors (France)	Secretariat-General (including internal services) Legal Service Monetary Affairs Forward Studies Unit
Frans Andriessen (Netherlands)	External Relations and Trade Policy Cooperation with Other European Countries
Henning Christophersen (Denmark)	Economic and Financial Affairs Coordination of Structural Funds Statistical Office
Manuel Marin (Spain)	Cooperation and Development Fisheries
Filippo Maria Pandolfi (Italy)	Science, Research & Development Telecommunications, Information Technology and Innovation Joint Research Center
Martin Bangemann (F. R. Germany)	Internal Market and Industrial Affairs Relations with the European Parliament
Leon Brittan (United Kingdom)	Competition Financial Institutions
Carlo Ripa di Meana (Italy)	Environment Nuclear Safety Civil Protection
Antonio Cardoso e Cunha (Portugal)	Personnel and Administration Energy and Euratom Supply Agency Small Businesses, Distributive Trade and Tourism
Abel Matutes (Spain)	Mediterranean Policy Relations with Latin America North-South Relations

Appendix I (Cont.)

Peter Schmidhuber (F.R. Germany)	Budget Financial Control
Christiane Scrivener (France)	Taxation and Customs Union
Bruce Millan (United Kingdom)	Regional Policies
Jean Dondelinger (Luxembourg)	Audiovisual and Cultural Affairs Information and Communication A "People's Europe"
Ray MacSharry (Ireland)	Agriculture Rural Development
Karel Van Miert (Belgium)	Transport Credit and Investment Protection and Promotion of Consumer Interests
Vasso Papandreou (Greece)	Employment and Industrial Relations Social Affairs Human Resources Education and Training

Information provided by EC Office of Press and Public Affairs (Washington, D.C.).

DIRECTORATES-GENERAL

DG I	External Relations
DG II	Economic and Financial Affairs
DG III	Internal Market and Industrial Affairs Task Force: Small and Medium-sized Enterprises
DG IV	Agriculture
DG V	Employment, Social Affairs and Education
DG VI	Agriculture

Appendix I (Cont.)

DG VII	Transport
DG VIII	Development
DG IX	Personnel and Administration
DG X	Information, Communication and Culture
DG XI	Environment, Consumer Protection and Nuclear Safety
DG XII	Science, Research and Development Joint Research Centre
DG XIII	Telecommunications, Information Industries and Innovation
DG XIV	Fisheries
DG XV	Financial Institutions and Company Law
DG XVI	Regional Policy
DG XVII	Energy
DG XVIII	Credit and Investments
DG XIX	Budgets
DG XX	Financial Control
DG XXI	Customs Union and Indirect Taxation
DG XXII	Coordination of Structural Instruments

APPENDIX II

QUALIFIED MAJORITY VOTING IN THE COUNCIL OF MINISTERS

As provided in Article 100a of the revised Treaty of Rome, voting on proposals related to the completion of the internal market in the Council of Ministers shall be by qualified majority. This applies in all cases except for proposals regarding:

- "Fiscal provisions..."
- Provisions "relating to the free movement of persons..."
- Provisions "relating to the rights and interests of employed persons."

Such proposals must be passed unanimously by the Council.

Per Article 148 a "qualified majority" means at least 54 out of 76 votes -- the votes of member states being weighted according to the following formula:

France	10 votes
Germany	10
Italy	10
United Kingdom	10
Spain	8
Belgium	5
Greece	5
Netherlands	5
Portugal	5
Denmark	3
Ireland	3
Luxembourg	2

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Appendix III

The New EC Approach to Harmonization of Standards and Certification

By Patrick W. Cooke and Donald R. Mackay
Office of Standards Code and Information
National Bureau of Standards

Most EC Member States have their own standards which set health, safety and quality requirements for goods sold in their national markets. When those national standards differ, or when product standards, testing and certification procedures are not recognized from country-to-country, technical barriers to trade can result. Producers who wish to market their products in more than one country are often forced to have their products tested and certified several different times. Products must often be modified to meet each country's standards. This is expensive and discourages the marketing of products internationally.

The European Community plans to have, by the end of 1992, harmonized EC-wide standards, and procedures for testing and certification that will allow all products that comply with EC standards to freely circulate within the European Community.

The EC's "New Approach" to Standards

To achieve EC-wide standards, as well as EC-recognized testing and certification procedures, the European Community has adopted a "New Approach" intended to overcome delays inherent in the process of revising thousands of highly technical and differing national standards.

Under the EC's "New Approach," EC Directives promulgated by the European Community are limited to defining "essential requirements" for protection of health, safety, the environment and, in some cases, industrial policy concerns. The task of establishing the technical standards for these essential EC requirements will be taken on by the non-governmental European standardization bodies, such as the Committee for European Standardization (CEN) and the Committee for European Electrotechnical Standardization (CENELEC).

Where national product standards already exist, these regional standards bodies will seek to harmonize them. In the absence of existing standards, the regional standards bodies intend to develop European standards based on international standards developed by such groups as the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). Alternatively, individual EC Member States may adopt appropriate standards to satisfy the established health, safety, and environmental requirements.

This process of producing several hundred new "harmonized" European Standards may take years. In the meantime, the European Community's program to achieve the free circulation of goods and services within the EC's internal market is not to be delayed. Once the harmonized, EC-wide "essential requirements" have been met, EC Member States will be obliged to recognize the adequacy of each others' national standards for non-essential characteristics. More importantly, for products where no EC-wide directive exists, Member States will also be obliged to recognize each others' national standards.

U.S. Standardization Concerns

The EC legislation dealing with standardization is likely to have a profound effect on U.S. exports, because harmonized standards may inadvertently be framed so as to hinder the market access of U.S. products. Equally important, products imported from the European Community may be more competitive due to the harmonized standards and the economies European companies will experience as a result.

Currently, U.S. exporters are not given the opportunity to review and comment on proposed EC standards during the initial development phase, i.e., before they are issued for voting within CEN and CENELEC. This prevents U.S. companies and standards organizations from reviewing EC proposals at a time when their comments are likely to be persuasive. Draft European standards issued by CEN and draft specifications issued by the Electronic Components Committee (CECC) of CENELEC "for formal voting" are available from the American National Standards Institute (1430 Broadway, New York, N.Y. 10018; tel. 212-642-4900).

Although the European Community claims that the GATT Standards Code does not oblige signatories to publish proposed EC standards when they are first notified to the EC Member States and their industry associations, the United States Government and industry have sought opportunities to review and comment on some

early draft EC directives before they are "set in concrete."

EC Testing and Certification

Once EC-wide standards are agreed upon, two further technical steps may be required in order to market a product in Europe: 1) product testing to assure conformance to the EC-wide standard; and 2) assurance that the testing has been conducted correctly.

The European Community is now attempting to develop a sectoral approach to the mutual recognition of test data and certification procedures for products destined to circulate within the European Community. The intent is to avoid the wasteful duplication of effort in product approvals.

This initiative will involve the preparation of common conditions and codes of practice for implementation by national testing laboratories and certification bodies in the European Community. It will most probably lead to agreements for reciprocal recognition of national laboratory accreditation programs.

Recent statements by European Community officials indicate realization of an immediate need to establish a harmonized approach to testing and certification. Their sense is that without these additional initiatives, harmonized standards will not guarantee the free circulation of goods throughout the Community. The EC Commission proposes to meet this need by establishing an institution for certification and testing that will deal with both voluntary and mandatory declarations of conformity. This new EC institution would establish criteria leading to the mutual recognition of conformity marks, particularly among EC members and between the EC and EFTA* countries.

The EC Commission's informal proposal for this institution would make it completely independent of any existing regional or national standards body although all those standards bodies would be given a role in establishing EC priorities regarding testing and certification.

Conclusion

The European Community is proceeding aggressively with plans to harmonize differing national standards and testing and certification procedures into a single EC-wide body of uniform standards and regulations. This can offer real advantages to U.S. businesspeople interested in a large market for their goods. A U.S. product that meets the EC requirements in one Member State will then be free to be marketed throughout the European Community.

* The Member States of the European Free Trade Association (EFTA) include Austria, Finland, Iceland, Norway, Sweden and Switzerland.

APPENDIX IV

SOURCES OF FURTHER INFORMATION

The following is a brief guide to further sources of information, including both published sources and offices where contacts may be made for more details on specific issues than is provided in this paper. It is intended to assist business persons who read this report, and is not a comprehensive bibliography.

European Community Official Sources

The major U.S. source of documents and information on EC-92 is the European Commission's office in Washington. The address is:

Delegation of the Commission of the European Communities
2100 M St. NW, Suite 707
Washington, DC 20037
(Tel. 202/862-9500)

The E.C. also maintains offices in New York and San Francisco.

Some basic E.C. documents that have been used in preparing this report are:

Completing the Internal Market: White Paper from the Commission to the European Council (Commission of the European Communities, June 1985).

Completing the Internal Market: The Progress Report Required by Article 8b of the Single European Act (Commission of the European Communities, November 3, 1988)

(DG III in Brussels also compiles periodic updates of all internal market directives that have been adopted. The most recent list is dated October 31, 1988.)

There are two Commission publications summarizing the economic background of the EC-92 program and the results of the full 35-volume E.C. study on the "costs of non-Europe." The briefer policy summary, designed for the business reader, is:

Paolo Cecchini, et al., The European Challenge -- 1992: The Benefits of a Single Market (published for the Commission of the European Communities, 1988; U.S. distributor -- Gower Publishing Co., Brookfield, VT), 125 pp.

A more comprehensive and formal summary of the findings is:

Michael Emerson, et al., The Economics of 1992, issued as European Economy, no. 35 (Commission of the European Communities, March 1988), 222 pp.

Appendix IV (Cont.)

On technical standards, the basic framework is outlined in:

Florence Nicolas, Common Standards for Enterprises (Commission of the European Communities, 1988), 79 pp.

The full Treaty of Rome, as amended by the Single European Act, is published in:

Treaties Establishing the European Communities, abridged ed. (Office of the Official Publications of the European Communities, 1987), 649 pp.

U.S. Government Official Sources

The International Trade Administration of the Department of Commerce maintains a comprehensive list of all proposed and adopted measures relating to EC-92. This information, with more detailed follow-up information on specific issues, can be obtained from:

Single Internal Market: 1992 Information Service
Office of European Community Affairs
U.S. Department of Commerce -- Room 3036
14th St. and Constitution Ave. NW
Washington, DC 20230
(Tel. 202/377-5276)

U.S. business visitors to Brussels should contact:

U.S. Mission to the European Communities
Blvd. du Regent 40
Brussels, Belgium
(Tel. from U.S. 322/513-3830)

See also the following U.S. government analyses:

Department of State, Bureau of European and Canadian Affairs, The European Community's Program To Complete a Single Market by 1992 (July 1988).

Glennon J. Harrison, The European Community's 1992 Plan: An Overview of the Proposed "Single Market", Congressional Research Service report no. 88-623 E (September 1988)

Office of the U.S. Trade Representative, Completion of the European Community Internal Market: An Initial Assessment of Certain Economic Policy Issues Raised by Aspects of the EC's Program (December 1988).

Appendix IV (Cont.)

Private Sector Sources

The best and most comprehensive study of EC-92, with specific references to effects of major proposals on U.S. economic interests is:

Michael Calingaert, The 1992 Challenge from Europe: Development of the European Community's Internal Market (Washington: National Planning Association, 1988), 148 pp.

The most comprehensive and current information on specific EC-92 developments is provided by the E.C. Committee of the American Chamber of Commerce in Belgium. AmCham publications are available for sale to non-members. A particularly useful and concise guide, that is periodically updated, is:

Business Guide to EC Initiatives, E.C. Committee of the American Chamber of Commerce in Belgium (latest ed. - Autumn 1988), 86 pp.

For copies of this guide and information on other AmCham material, contact:

American Chamber of Commerce in Belgium
E.C. Affairs Office
Ave. des Arts 50, Bte. 5
B-1040 Brussels, Belgium
(Tel. from U.S. 322/513-6892)

the computer software and services industry association

Testimony of

ADAPSO, THE COMPUTER SOFTWARE AND SERVICES INDUSTRY ASSOCIATION

before

THE HOUSE COMMITTEE ON SMALL BUSINESS

February 9, 1989

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February 9, 1989

Good morning. My name is George DeBakey. I'm the Executive Director of ADAPSO, the Computer Software and Services Industry Association. As the largest trade association for the computer software and services industry, ADAPSO represents firms which market micro, mini and mainframe software products, professional services, information systems integration services, network-based information services, processing services and value-added remarketing services. ADAPSO's members, and the industry as a whole provide these services throughout the world. Approximately 79 percent of our more than 800 members are considered small businesses under the definition used by the Small Business Administration. I appreciate the opportunity to speak before the committee today on the consolidation of the EC Market. While the EC consolidation is of great importance to our trade relations with Europe, many in our industry are just beginning to look at the issue.

The consolidation will be achieved through a series of directives, or policy statements, that for all practical purposes, serve as domestic law in each of the EC member countries. For the computer software and services industry, as for other high tech industries, these directives can be separated into two categories -- those that apply specifically to high tech industries and those that apply to other industries.

In my testimony this morning, I will briefly review the anticipated results of these directives. I would like to concentrate, however, on the more positive effects these directives have on small businesses and how public and private sectors can work together to help U.S. companies take advantage of the numerous market opportunities.

BACKGROUND

According to International Data Corporation (IDC), U.S. independent software vendors accounted for $11.4 billion in revenue in 1988. Nearly one third of this revenue -- $3.9 billion -- was by small businesses. By 1992, IDC expects this figure to nearly double to $6.9 billion. Applications software will account for the largest growth.

INPUT, a California-based research firm, estimates that 19,600 of the 20,000 known software and service companies in the U.S., are considered small businesses under the Small Business Administration definition. While at least 5,800 of these small business are independent software vendors, the majority are involved in professional services (custom programming) and processing services. See Appendix A.

U.S. software producers generally account for approximately 70 percent of the world market.

EUROPEAN MARKETS

Western Europe represents a very lucrative market for U.S. computer software suppliers. According to INPUT, in 1988, European users spent approximately $10.1 billion on packaged software and $5.8 billion on custom software. By 1993, these figures are expected to increase to $26 billion and $18.5 billion respectively. Individual EC country markets for applications software alone are expected to increase at between 23 perecnt and 30 percent annually. (See Appendix B).

When most software and services companies begin to export by and large, they start in the Western European markets. These markets seem to provide a certain level of comfort, based on similarities in language, customs and business practices.

Last September, ADAPSO sponsored an international marketing seminar, designed to specifically assist those companies which had never exported or which had just begun to export. The seminar featured two breakout sessions -- one on Western Europe, one on Japan. Attendance at the Western Europe session was nearly 5 times that of the Japan session.

DIRECTIVES

A number of the directives, proposed directives, and studies apply specifically to the computer software and services industry and cover a wide variety of issues. They include the "Green Paper on Copyright and the Challenge of New Technology", the proposed directive on the protection of computer software, standardization of tax regulations, and computer and telecommunications standards. These directives will affect all computer software and services companies, regardless of their size.

Intellectual Property Rights

In the computer software and services industry, the intellectual property content represents 100 percent of a product's value. The media on which it is transferred is incidental. The protection of that intellectual property, therefore, is vital. The commission issued a green paper on copyright and the protection of computer software. ADAPSO filed comments stating that computer programs should be treated no differently than other

literary works, with a full term of protection, minimal standards of originality and protection for all computer program elements to the extent they contain copyrightable expression. A copy of ADAPSO's response is attached in Appendix C.

Based on the responses to the green paper, the European Commission issued a draft directive on December 22, 1988, on the protection of computer software. While ADAPSO is still reviewing the draft, all comments to date indicate that the directive will help provide very strong and comprehensive protection. If this directive is adopted, software developers should receive improved protection in several EC countries, particularly Italy and West Germany. Piracy -- the illegal copying of software programs -- will remain. However, this is an issue best addressed on a bilateral basis.

Taxes and Tariffs

The tax and tariff schedules for computer software and services are very awkward: they have never been tariffed in the traditional sense. Unlike most manufactured goods, the product -- in this case, either the intellectual property or the service -- is not a tangible good. Therefore, any tariffs levied are on the media, such as diskettes, tapes or compact discs, and amount to little more than a nominal fee.

The intellectual property content, however, is usually assessed under one or more taxes -- including royalty, value-added and sales taxes. A few of ADAPSO's companies have encountered a special "high tech development tax" in several EC countries. The existence of these taxes is not readily known to small companies, which often lack the resources to research the different tax structures in individual countries. While the proposed reduction of tariffs is welcomed, standardization and greater transparency in the tax structure may be more important to small software and service providers.

Regulations and Standards

There has been quite a bit of concern within the U.S. telecommunications industry over regulation and standards. The EC member countries claim that their individual markets are not large enough to support separate research efforts, and that by standardizing equipment and procedures they can maximize their R&D efforts. We do not disagree with their premise. We must take steps, however, to ensure that such standardization does not discriminate against U.S. software and service providers.

Government Procurement

Current government procurement practices in the EC discriminate against foreign-based software companies. Many of the EC member countries apply the procurement procedures agreed to under the GATT (General Agreement on Tariffs and Trade) only when computer or telecommunications equipment is involved. Government

tenders for purchases of computer software are not subjected to the transparency and notice requirements. Future reforms in government procurement policies will open a potentially lucrative market to U.S. suppliers.

General Directives

A number of other issues -- such as employee rights, distribution contracts and rules governing the establishment of businesses -- are being examined. Directives on these issues will affect all industries, including computer software and services, and should be reviewed carefully to ensure that non-EC companies are not arbitrarily burdened.

OUTLOOK

Many of the proposed directives must be examined and monitored. However, this should be done on a case-by-case basis. The acknowledgment of individual problem areas should in no way imply that the entire consolidation effort is detrimental to U.S. industry.

In fact, the consolidation of market policies actually benefits small businesses by "levelling the playing field". Currently, each member country has its own set of market policies and its own legal structure. Most small companies do not have the resources to decipher multiple sets of policies, and, therefore, often limit their export markets to only a few countries. Once policies are standardized, U.S. exporters will need to become familiar with only one tax structure, one system of intellectual property protection and so on. It will no longer be necessary to employ separate experts for each EC member country.

We must keep in mind, however, that while consolidation will benefit U.S. exporters, it will also benefit their EC-based competitors. The UK, for example, recognizes the increasing export potential and has outlined a trade assistance program to aid its companies in entering the other EC markets. It is imperative that U.S. companies not delay their expansion into European markets.

INDUSTRY NEEDS

In order for U.S. small businesses to take advantages of the opportunities offered by the consolidation, they need the continued assistance of the U.S. Government. From a policy standpoint, the Government has been very successful in tracking the different directives and in analyzing their anticipated effects.

Just as important, however, are the marketing assistance programs offered by the Government. The U.S. Department of Commerce, through both the International Trade Administration (ITA) and the Small Business Administration (SBA), has a number of programs directed at companies which are either new to exporting or inexperienced in particular markets. While these programs have been very useful to individual companies in the past, they need to be expanded, or, at the very least, better publicized.

A number of market research reports are available, yet many are either out of date or are too general to be of use. Competitive assessments are written on several selected industries each year, however, the assessments of high growth industries very quickly become outdated. Some of the most useful government-generated market research has been done either as background for trade missions or as part of the annual Post Commercial Action Plans (PCAPS -- Embassy action plans). While these reports are unclassified and available to the general public, few companies are aware that they exist.

The U.S. Department of Commerce's trade mission program has been extremely successful. The attention given to individual companies, combined with a low participation fee, has made it especially attractive to small companies. The drawback with these missions is the limited number that are offered each year and the limited number of companies that are able to participate. There are only a handful of trade missions scheduled for the EC this year, and each mission can support 10-15 companies only. This situation could be remedied, at least in part, by increasing the cooperative efforts with both state governments and with private sector organizations.

Similarly, the Small Business Administration has programs to encourage exports. At ADAPSO, we are most familiar with publications that SBA has written jointly with AT&T. We have distributed several of these books, including The Small Business Resource Guide to our members and the demand was tremendous. Currently, we are one of several groups working with SBA and AT&T on similar book dedicating to exporting.

Finally, the Commerce Department ran an export education and assistance program last year -- EXPORT NOW -- which proved to be very successful in encouraging companies to explore export possibilities. As a member of the EXPORT NOW Advisory Board, I worked first hand with many potential high tech exporters. The EXPORT NOW staff served as a contact point for exporters to find government assistance. The information that was disseminated through the staff, and through volunteer organizations, such as ADAPSO, was invaluable to many companies. Programs such as this need to be expanded.

CONCLUSION

The efforts being made by the European Economic Community to consolidate market policies will in many respects benefit U.S. exporters, particularly small companies. While the U.S. Government and the U.S. private sector should continue to monitor individual directives, the overall effect of the changes should be very positive. The standardization of policies across international borders will allow U.S. exporters to enter multiple EC member countries without the burden of learning 12 individual market structures.

U.S. companies, however, cannot afford to hesitate. While the consolidation will make entrance easier for U.S. companies, it will also make marketing easier for U.S. competitors. The U.S. Government can and should be poised to help smaller companies reap the benefits of international marketing.

APPENDIX A

INDUSTRY STATISTICS
February, 1988

Independent Software Vendors	$ 11.4 billion
Total Packaged Software	$ 26.6 billion
Professional Services	$ 13.9 billion
Processing Services	$ 20.5 billion
Total	**$ 72.4 billion**

1988 Independent Software Vendors Small Business revenue is $3.875 billion

1988 Small Business Breakdown:

Systems/Utilities	$ .225 billion
Application Tools	$ .650 billion
Application Solutions	$3 billion

1992 Independent Software Vendors Small Business revenue is $6.6 billion

1992 Small Business Breakdown:

Systems/Utilities	$ .3 billion
Application Tools	$ .8 billion
Application Solutions	$5.5 billion

Source: International Data Corporation

Number of Companies:

Industry Figures:

Above $250,000 in revenue	8,000
Below $250,000 in revenue	12,000
Total Software and Services industry	20,000

Number of companies over $7 million dollars in revenue = 400

Number of companies with less than $7 million dollars in revenue = 19,600.

Independent Software Vendor Figures:

Above $250,000 in revenue	3,000
Below $250,000 in revenue	3,000
Total Independent Software Vendors	6,000

Number of companies over $7 million dollars in revenue = 200

Number of companies with less than $7 million dollars in revenue = 5,800.

Source: INPUT

APPENDIX B

Applications Software Products
Comparative Country Markets

Market	Market Forecast ($ Millions)			
	1987	1988	1988-1993 AAGR (Percent)	1993
West Germany	655	805	23	2,285
France	605	750	23	2,110

INPUT

NOTES:

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Applications Software Products
Comparative Country Markets

Market	Market Forecast ($ Millions)			
	1987	1988	1988-1993 AAGR (Percent)	1993
United Kingdom	490	605	22	1,630
Italy	365	460	26	1,460
Benelux	230	285	23	795

INPUT

NOTES:

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Applications Software Products
Comparative Country Markets

Market	Market Forecast ($ Millions)			
	1987	1988	1988-1993 AAGR (Percent)	1993
Scandinavia	195	240	23	675
Spain	55	72	30	265
Switzerland	95	118	23	330

INPUT

NOTES:

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Applications Software Products
Comparative Country Markets

Market	Market Forecast ($ Millions)			
	1987	1988	1988-1993 AAGR (Percent)	1993
Rest of Europe	55	70	28	240
	2,745	3,405	24	9,790

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NOTES:

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APPENDIX C

COMMISSION OF THE EUROPEAN COMMUNITIES

Green Paper on Copyright and the Challenge of Technology - Copyright Issues Requiring Immediate Action — COM (88) 172

Comments of ADAPSO, The Computer Software and Services Industry Association, Inc.

on

Chapter 5: Computer Programs

Statement of Interest and Position

ADAPSO, The Computer Software and Services Industry Association, Inc., is the trade association of the United States computer software and services industry. Its 900 member companies and industry provide the public with business applications and systems software for mainframe, midframe, and micro computers; professional software consulting, design, and programming services; integrated hardware/software systems; information systems integration services; and network-based information services. ADAPSO's members and industry provide software and services throughout the world and particularly within the European Community. Accordingly, ADAPSO has a significant interest in this proceeding and appreciates the opportunity to present its views.

ADAPSO welcomes the Commission's support of copyright protection for computer programs.[1] As a matter of association policy and as the basis for the following comments, ADAPSO endorses the following general principles:

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1. Green Paper, para. 5.5.13.

1. Effective intellectual property protection of computer software, at both the national and international levels, is essential for the continued growth of the worldwide software industry,

2. Copyright provides an appropriate framework, at both the national and international levels, to secure effective legal protection for computer software,[2] and

3. National governments should confirm by appropriate legislation the availability of copyright protection for computer software and should resolve emerging issues within the framework of copyright.[3]

As a means of protecting computer programs, copyright serves several important public policy considerations. Extending solely to the expression of ideas, processes, and procedures, copyright balances the private interest of program authors in securing reward for their efforts and the public interest in enhancing the fund of public knowledge. In addition, copyright has demonstrated its flexibility in accommodating new forms of writing.[4] Finally, copyright provides an established international framework within which to allocate proprietary rights and to resolve questions regarding the appropriate scope of protection for computer programs. Accordingly, ADAPSO supports copyright protection for computer programs and submits the following responses to the specific questions posed by the Commission in Chapter 5 of its June 1988 Green Paper.

Specific Responses

1. Whether [copyright] protection should apply to computer programs fixed in any form.

1. Copyright protection should apply to computer programs regardless of the form of fixation, which can

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2. ADAPSO regards computer programs as literary works enjoying full protection under copyright rather than under a neighboring right. As noted in Green Paper, para. 5.3.10, copyright protection does not preclude complementary protection through patent, trade secret, unfair competition, or contract law.

3. "ADAPSO Position on Legal Protection of Computer Software," ADAPSO Board of Directors, Oct. 15, 1984.

4. In 1790 in the United States, for example, copyright extended only to maps, charts, and books. Subsequently, copyright was extended to drama, motion pictures, music, photographs, and sound recordings. H.Rep. 94-1476, 94th Cong. 2d Sess. 51-52 (1976).

include read-only-memory (ROM) and its variants, magnetic tape or disk, or more traditional forms such as paper. Other literary works are protected by copyright when embodied in these twentieth century media, and computer programs warrant no different treatment.

2. Whether programs should be protected where they are original in the sense that they are the result of the creator's own intellectual effort and are not commonplace in the software industry.

2. Computer programs should be regarded as original so long as they are "the result of the creator's own intellectual effort." That is, a computer program should be regarded as original if it is independently created. This comports with the long-established copyright principle that originality requires neither novelty nor aesthetic or artistic merit.

The suggested qualification, "not commonplace in the software industry," should be rejected for several reasons. First, there is no generally recognized standard of what should be regarded as "commonplace in the software industry." Consequently were this qualification adopted, courts and administrative agencies would necessarily be required to fashion and to apply it on an ad hoc basis thereby creating the potential for damaging uncertainty in the industry. Second, the proposed qualification raises the danger that programs that have achieved widespread acceptance and popularity would be deemed "commonplace." It would defeat the copyright system objective of promoting creativity by rewarding the efforts of authors, if the protection of a program were inversely proportionate to its commercial success. Third, to the extent program elements are in the public domain or constitute mere ideas or processes, as distinguished from their expression, they are free for all to use.[5]

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5. Of course, the particular selection and arrangement of otherwise "commonplace" elements may itself be protected.

3. Whether access protocols, interfaces and methods essential for their realization should be specifically excluded from protection.

3. All program elements, including access protocols, interface and methods essential for their realization, to the extent they embody the expression of ideas or processes rather than the ideas or processes as such should be protected under copyright. In this regard, computer programs should be treated as other literary works, with established principles of copyright being applied to determine the appropriate scope of protection.[6] Further, there are no generally accepted definitions of "access protocols" or "interfaces." In the absence of any clear and widely accepted definitions, the potential for damaging uncertainty would be increased. Finally, and as recognized by the Commission,[7] to the extent that the exercise of rights regarding access protocols and interface specifications is likely to involve the abuse of a dominant market position, relevant competition laws are available to address the problem.[8]

4. Whether rights to authorize restricted acts should include a broad use right either formulated as such or as a consequence of rights to authorize reproduction, rental, adaptation and translations; for these latter rights, specific provision should be made in any event.

4. Computer program copyright owners should have same rights as the copyright owners of other literary works, including the exclusive rights to reproduce the work, to make translations, adaptations and other derivatives of the work, and to distribute the work to the public, including the right to rent, lease, or lend computer program copies. Otherwise, it is unclear what the Commission means by a broad "use right."

5. Whether the adaptation of a program by a legitimate user exclusively for his own purposes and within the basic scope of a licence should be permitted.

The right to do or to authorize the translation or adaptation of literary works, including computer programs, is a fundamental right of copyright owners.[9] In addition, a computer program copyright owner

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6. See, "A Proposal for the Improved Protection of Software," ADAPSO Board of Directors, Nov. 10, 1981. See also, ADAPSO Brief in Whelan Associates, Inc. v. Jaslow Dental Laboratory, Inc., 797 F.2d 1221 (3d Cir. 1986) in which the association argued that the structure, sequence, pattern, and organization of a computer program may be copyrightable.

7. Green Paper, para. 5.5.11.

8. See, e.g., Treaty of Rome, art. 86.

9. Berne Convention, art. 12.

should be able to ensure that program reproduction (which is necessary for modification or adaptation) does not conflict with the normal exploitation of the work or otherwise unreasonably impair the owner's legitimate interests.[10] ADAPSO believes that a general right to make adaptations "to improve efficiency" will prejudice the legitimate interests of program copyright owners. If particular users require program modifications or enhancements, these can be accommodated by license or other agreement with the copyright owner. In addition, the terms "legitimate user" and "his own purposes" are vague and overbroad.

6. Whether the reproduction of a computer program for private purposes should not be permitted without authorization of the right holder whereas the production of back-up copies by a legitimate user should be permitted without authorization.

6. ADAPSO agrees that any Commission directive should contain a provision excluding "private copying" of computer programs in general.[11] Such "private purposes" copying has had a significant adverse affect upon computer program copyright owners. In the United States, for example, it has been estimated conservatively that fifty percent (50%) of all microcomputer program copies in use are unauthorized.[12]

7. Whether the term of protection should start with the creation of the program and last for an appropriate number of years to be fixed by directive; a choice will have to be made between a period of 50 years and one in the region of 20 or 25 years.

7. The term of protection for computer programs should be the same as that for other literary works as provided under the Berne Convention. The term of protection should be life of the author plus fifty (50) years, with anonymous and pseudonymous works being protected for fifty (50) years from the date of publication.[13] Although some computer programs may have a shorter period of commercial viability, the same is true for other literary works. In addition, the software industry is relatively young and it is premature to speculate on the commercial life of computer programs. Indeed, some computer programs have already had a commercial life of twenty (20) years and show no signs of obsolescence.[14]

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10. See, Berne Convention, art. 9(2).

11. Green Paper, Para. 5.6.18.

12. See, "Future Computing Survey: Installed Base of Business Software for Personal Computers 50% Authorized, 50% Pirated," Future Computing, Inc., Jan. 17, 1985.

13. Berne Convention, Art. 7(1), 7(3).

8. Whether the issue of authorship of computer programs, including authorship in respect of computer-generated programs, should be left largely to Member States but with national laws having to establish who, in the absence of contractual arrangements to the contrary, is to be considered the author.

8. ADAPSO agrees that the question of computer program authorship should be left to Member States and that each State should establish who, in the absence of contractual arrangements to the contrary, should be regarded as the author. The laws of Member States should allow employers to be regarded as the copyright owners of works created by employees.

Otherwise, the person who contributes original copyrightable expression should be regarded as the author, even though the work is created using a computer. In addition, ADAPSO agrees with the Commission that it is inappropriate to include provisions on moral rights in a Community framework directive.

9. Whether protection would be available for creators who are nationals of States adhering to the Berne Convention or the Universal Copyright Convention or enterprises of such countries or possibly to all natural and legal persons irrespective of origin or domicile.

9. ADAPSO believes that computer programs are literary works covered by both the Berne and the Universal Copyright Conventions. Further, ADAPSO believes that copyright protection of computer programs as literary works, combined with the principle of national treatment, will enhance the dissemination of software throughout the Community, to the benefit of creator and user alike.

10. Whether in infringement cases the onus of proof in respect of copying should be shifted to the alleged infringer once the plaintiff makes available to the Court the different versions of his program to which he has access and shows similarity and that the alleged infringer has had access to the right holder's program.

10. ADAPSO believes that procedural issues, including those regarding the burden of proof, are best left to Member States and should not be the subject of a Commission directive.

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14. E.g., Answer Systems' "Mark IV" was created in 1968, and Applied Data Research's "Roscoe" was created in 1969 as was Pansophic's "Panvalet."

Conclusion

ADAPSO appreciates this opportunity to express to the Commission its views on the legal protection of computer programs. ADAPSO supports the Commission's view that copyright is an appropriate form of protection for computer programs. Copyright has demonstrated itself to be a flexible means of affording proprietary rights, able to balance private and public interests while accommodating itself to new forms of writing. As such, it has contributed to the health and vitality of the software industry within the Community and throughout the world. If, as the Commission's inquiry proceeds, ADAPSO can be of help in resolving some of the questions surrounding the appropriate scope of copyright for computer programs, please do not hesitate to call upon us.

September 1988

p. 118

U.S. Small Business and the European Community 1992
by
Franklin T. Burroughs

Proposing to eliminate restrictions to the free flow of goods, capital and individuals, to permit the harmonization of economic policies and to effect a common external tariff, West Germany, Belgium, the Netherlands, Luxembourg, France and Italy formally established the European Economic Community in 1957. The United Kingdom, Ireland and Denmark joined the Community in 1973. By the mid-1990s, Greece, Portugal and Spain had taken out membership. Today the entity is referred to as the European Community, implying a broader form of cooperation.

The Community serves as a common market and combines the elimmination of tariffs between members with the adoption of a unified system of tariffs against nonmember countries. Further, it removes restrictions on the movement of labor and capital between and among countries and promotes consistent regulations concerning trade and business among countries in an effort to reduce the effect of non-tariff barriers to trade, at least among its members. The Community remains the world's largest regional trading arrangement and the archetype of today's economic unions.

Toward 1992

Now the Community has launched an historic effort to complete what the original six members began thirty years ago: the creation of a common market in which goods, people, services and capital can move across borders without hindrance. The objectives of this massive project are to create the world's largest and wealthiest market and to maintain a competitiveness with the potential U.S. Canadian Economic Union.

The largest economic effects of the unification within the Community are projected to be these:

--The elimination of national boundaries for banking, insurance and other services;

--The easing of corporate mergers and takeovers across borders;

--The creation of a Community-wide job market for professionals as well as technical and skilled workers;

--The increase in competition in bidding for government contracts for telecommunications and other goods.

Taken as a whole, the European Community (EC) remained the largest U.S. trading partner in 1986. The bilateral trade relationship's significance has grown with Spain and Portugal's EC accession on January 1, 1986. Two-way trade totaled more than $131 billion in 1986, accounting for approximately 11 percent of U.S. trade worldwide.

The U.S. trade deficit with the EC has continued to increase since 1985. It rose from $23.3 billion in 1985 to $27.1 billion in 1986. U.S. exports rose slightly from $48.3 billion in 1985 to $52.4 billion in 1986. This marked only the second year an increase occurred since 1980. During the same period, however, U.S. imports rose from $71.6 billion to $79.5 billion.

Principal 1986 U.S. exports were coal, digital computers and software. Motor vehicles, machinery and chemicals remained the principal U.S. imports.

Direct U.S. investment in the 12 EC member nations totaled $99.6 billion at the end of 1986. Comparable EC investment in the United States was $124.8 billion. European divisions of U.S. multinationals generate about $400 billion in sales annually while U.S. affiliates of EC firms generate about $300 billion each year.

When such ties are considered the U.S.-EC trade and investment relationship is easily the world's largest, totaling nearly $1 trillion.

1992 can potentially worsen the U.S. deficit by drastically altering the competitive conditions affecting U.S. companies trading with the Community. In order to improve their competitiveness and avoid a worsening situation American firms must be aware of the detailed changes in the Community's business environment, understand the barriers and potential barriers to trade with the Community and have a plan of action for reducing the negative impact on their trading activities.

Present Community Barriers

On such products barriers as kraft paper and paper board the Community imposes duties ranging from six to nine percent even though the U.S. assesses no duties. The Community definition of the products exacerbates the problem.

While the United States allows softwood plywood to enter the country duty-free, the Community charges ten percent ad valorem on the same product. Some 650,000 cubic meters can be imported into the Community without duty under the quota system.

Other U.S. products on which high tariffs are levied when entering the Community include cigarettes, smoking tabacco, cigars, gas powered trucks, tufted carpets, dumpers, aluminum products, semiconductors, pollock, halibut and salmon. Recently, the Community increased its tariffs on such high-technology products as digital audio discs and personal video cassette recorders.

The procedures for the adoption of harmonized standards for telecommunications equipment followed by the Community directs Community members to accept data from other member nations developed in accordance with a common set of European standards. Standards strictly applicable to European goods can practically preclude U.S. products from the European market.

As of January 1, 1988, in accordance with the Third Country Meat Directive, meat cannot be imported into the European Community from a third country unless Community veterinarians have inspected and certified slaughtering and packaging plants in the particular country. Relatively few U.S. plants have been approved.

A recent Community ban on the use of both natural and synthetic hormones in livestock production threatens effectively to eliminate the importation of meat and meat products from the United States into the Community.

Strong 'buy national' policies tend to influence negatively such industry sectors as telecommunications equipment, large electrical equipment and transportation-related items. Such policies limit the sales opportunities open to U.S. firms in the Community.

The Community grants export subsidies or restitutions to its exporters on a wide range of agricultural products. These restitutions usually represent the difference between the Community internal price and the lowest price competing exporters offer. Community exporters can, therefore, generally sell agricultural products on the world market at a price considerably lower than the internal Community price and often lower than the prevailing world market price. The subsidies exert downward pressure on world agricultural prices and reduce the rate of return for all agricultural producers.

The tied-aid credits in which developing countries are afforded a package of aid and conventional export credits linked to donor nation purchases are sometimes used to the detriment of third-country competitors. The use of favorable concessional aid terms can preclude export sales by such nations as the United States.

Progress toward the harmonization of Community members' intellectual property laws has been slow, and national differences among the members' laws often create confusion and delay for U.S. companies. Legal complications may worsen the situation.

Potential Effects of 1992

As a result of 1992 one of the major impediments of U.S. exports to the European Community, especicially for small and medium-sized firms, may be bureaucracy bred by complexity. Rather than dealing with the employees and institutions of an individual government a firm seeking to do business with the Community will need to find its way through the maze of bureaucrats and institutions established to protect the objectives and regulations of some twelve countries. And the prospects for 1992 hardly seem to be for bureaucratic or legislative simplicity.

The Single European Act adopted by EC governments in 1985 should increase the powers of Community institutions. In accordance with the Act, the Council of Ministers will, for example, be able to determine that particular provisions in force in one of the member states must be recognized as being equivalent to provisions applied by another member. The result may be competitive legislation among member states. An American company attempting to trade with or conduct business in the Community could unwittingly become enmeshed in the legislative confusion.

1992 is in reality a massive experiment in deregulation. Banks in one member nation will be able to operate in other member countries. Insurance can be marketed throughout the Community. Many goods and services should be able to move across borders without hindrance. But the short-term effects may resemble those resulting from America's recent moves toward deregulation. Extreme price fluctuations, feverish competition and brutal battles for survival remain distinct possibilities. Already at a potential disadvantage, small and medium-sized firms could find themselves among the pack rather than in the lead in marketing their products.

A nationalism-internationalism conflict may become an unwanted by-product of 1992. Various member states view the Community concept differently. Some consider it only an economic union which does not encompass the unrestricted movement of people across borders. Multinational cooperation on such issues as gun control, border defence and immigration may prove sticky. National customs posts, tax and Community cooperation remain particularly important areas of potential disagreement. The possibly disruptive and complicated national concerns as regards borders are legion and can embroil American firms in un-

wanted controversy. The conflict could complicate the formation of joint-ventures. The concept of antitrust may assume a new meaning. The possible effects on mergers, acquisitions and direct foreign investment in the European Community have not yet been fully determined.

Barriers in transport and technology should gradually decrease after 1992, and barriers in financial services should readily disappear. This projected rapid disappearance coincides with a broader trend already under way.

Procurement promises to be a particularly tricky area for project 1992. This part of the project has some four aims: to increase the scope and close the loopholes in existing obligations; to grant the Commission greater power of enforcement; to imporve redress precedures for disappointed tenderers; and to extend open procurement to such businesses as energy, transportation and telecommunications.

The demolition of bariers to trade with the Community might prove difficult for Project 1992. But the potential for success lies squarely in the willingness of member countries to cooperate. Ultimately, changes in national attitudes will prove more significant to the removal or retention of restrictions to entry into the business of community states than will mere changes in rules.

Unlike the United States, Europe will probably remain a series of national markets that gradually become more acessible. Different languages will persist. The absolute freedom to live & work in any member state will remain in question. Customs controls at national frontiers are possible while multinational television networks carrying advertising readily across borders seem unlikely. Transactions costs and exchange-rate uncertainly inherent in sales and subcontracting will persist. A set of Euro-rules will probably not exist. Mutual recognition of rules between and among member states may reduce barriers and make market entry easier, but business people will need to discover for themselves what will be possible.

Non-Community -Related Barriers

Non-Community-related barriers may also continue to restrict the success of U.S. small business in the Community. To illustrate, rather than accumulating resources in-house which permit firms to use successfully environmental opportunities and readily face threats, U.S. business entities first undertake detailed analyses of the environment and then attempt to suit the in-house resources to situations.

Firms in the United States or associated with American business are often viewed as a number of strategic business units,

and resources are deployed in such a way as to ensure a portfolio balance among the various units. Resource-development decisions most often reflect the preferences of top management and their push for profit. The decisions indicate a triumph of logic and impersonality over involvement.

U.S. businesses tend to emphasize financial over human resources, the objective being the maximization of profit. When firms determine that a particular project may not contribute to corporate growth through earnings, they may abandon the projects abruptly. Decisions to withdraw in an effort to minimize near-term losses and protect financial resources are lauded as evidence of a determination 'to bit the bullet.; Long-term potential may be sacrificed to short-term expediency.

A strategic alliance between U.S. business and the Government of the United States is seldom evident in the cnduct of international commerce. US. embassies may serve as repositories of information, but hardly ever do they actively support specific American firms seeking contracts or product distribution. This lack of support at times puts U.S. companies at a distinct disadvantage when competing with their European counterparts, which enjoy a continuing alliance with their governments and their governments' active support.

Finally, one of the most serious of the non-Community related barriers to U.S. exports is the decline in U.S. international business expertise.

Possible Remedies

The barriers to U.S. exports to the European Community remain varied and significant. They involve both tariffs and non-tariff restrictions and originate within as well as outside the Community. Their influence can, however, be greatly reduced, if not eliminated, through awareness, concerned effort, strategic planning and definite communication.

Knowledge serves as the key to awareness, and information remains necessary to knowledge. American business people must continually seek information about the detailed changes in the European business environment as well as the latest developments in Project 1992.

Small and medium-sized firms may export indirectly and may have no special in-house activity for export purposes. In such instances the firms may wish to use international trading companies, export management companies or similar organizations. In order to serve these clients better it would seem appropriate

for the trading and export management firms to maintain and staff information centers which they could make available to other clients and potential clients on request and at minimum cost.

The Government of the United States must continue its attempt to find solutions to trade situations it considers disadvantageous to U.S. exporters to the European Community through bilateral and multilateral negotiations. Certainly, multilateral discussions conductd within the framework of the General Agreement on Tariffs and Trade (GATT) must be continued.

If possible, the United States government should enable American business people to become involved in the development of the industrial norms that will shape their respective products in the European market. The business people should also be involved in the testing, certification and standards-setting process employed by the Community. The government should discourge the continued use of restitutions by the Europeans that exert downward pressure on world agricultural prices and reduce the rate of return for agricultural producers. Tied-aid credits should be discouraged while the adoption of a Community-wide patent and trade-mark system should be encouraged.

Project 1992 may effect stiffer competition for non-European firms in the Community market, but to the extent possible, U.S. firms should position themselves to take advantage of what is projected to be greater openness in government procurement within the Community. It has also been suggested that firms that rely on public procurement for more than twenty-five percent (25%) of their sales should increase the scope of their markets and/or spread sales to the private sector.

Multinational firms should look carefully at their structures in Europe to make certain they are appropriate to the changing environment.

Small and medium-sized companies must make sure that the international trading firms, export management firms and other groups they associate themselves with are properly structured to fulfill their marketing requirement within the Community.

A stronger stragegic alliance must be established between the Government of the United States and U.S. business. No longer can each entity view the other as at worst an adversary and at best a nuisance. Each has an important role to play in international commerce, and regaining competitiveness requires that the roles be played in a mutually beneficial manner.

Most important, small, medium-sized and large U.S. firms must improve their international business expertise through whatever means they deem appropriate and cost effective. Without such expertise no amount of government-business cooperation, government negotiations or information-bank development will be useful or helpful. Without such a expertise U.S. business will not remain as competitive as it is now.

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